Supreme Court, U.S.
FILED

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UNITED STATES SUPREME COURT

Harlow Zirkind, Petitioner

- v. -

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas; Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit

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On Petition For Writ Of Certiorari

To The United States Court Appeals, Second Circuit 98-9461

Petition For Writ Of Certiorari

Harlow (Givon) Zirkind,
In Propria Persona
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

470PP

QUESTIONS PRESENTED FOR REVIEW:

1. Can the forgery of a judge's signature by litigants and/or their agents – including officers and clerks of the court, be overlooked, not considered and no contempt hearing be held on the matter where the federal judge and forger can be confronted with the forged document? Especially, when said forger has been caught red-handed in the past tampering with court documents and the filings of litigants in similar type cases against the same defendants? And, when said forgery was done for the express purpose of denying due process to a party, permitting discriminatory policies to not be prosecuted and not allowing federal questions to be addressed? And, if such a hearing is not held, can the court claim that since the litigant has not presented the forged document in a hearing that has not transpired, that an insufficient claim of forgery has been made? And, can such process be called due process?

2. Can defendants have ex-parte communications with a magistrate judge and receive ex-parte orders, which are never allowed to be challenged in an open hearing? And, under such circumstances, can a magistrate judge refuse to recuse herself? Does this not violate due process?

3. Can orders be allowed to issue, with blatant denials of due process, that are in contradiction to the law [including but not limited to the Federal Rules of Civil Procedure (FRCP)], especially when such orders cover-up obvious government corruption; bribery of officers of the court and; perjury by state court judges in federal court as defendants alleged to violated federal laws? All of which conveniently coincide with and abet malicious denials of due process in state court? And, which cover-up serious,

well documented federal questions?

4. Is the naming of a bank account as the source of bribes and demanding the subponeaing of records therein, considered a frivolous claim of bribery that the courts can ignore?

PARTIES

PETITIONER:

Harlow Zirkind, a.k.a. Givon Zirkind, residing at 547 Wyndham Road, Teaneck, NJ, 07666.

RESPONDANTS:

State of New York, represented by Attorney General, Dennis Vacco, 120 Broadway, 25th floor, NYC, NY, 10271.

E. Leo Milonas, Chief Administrative Judge of the Office of Court Administration, 270 Broadway, NYC, NY 10007. Represented by NYS Attorney General.

Justice Philip C. Segal, Family Court Judge, Brooklyn Family Court, resides at 209 Strattford Road, Brooklyn, NY 11218. Represented by NYS Attorney General.

Former Brooklyn Family Court Justice Karen S. Burstein, residing at 258 Broadway, Apt. #2C, NYC, NY 10007. Represented by NYS Attorney General.

N. G. Berrill, Ph.D., doing business at 26 Court Street, Suite 902, Brooklyn Heights, NY, 11242. Represented by Mary E. Pearson, Kopf, Nardelli & Dopf, 440 Ninth Avenue, NYC, NY 10001.

Nick Chimenti a.k.a. Nicholas Chimienti, having an office, clinic and supervised visitation program located at 1650 Coney Island Avenue, Brooklyn, NY 11230. Represented by Micheal J. Devereaux, D'Amato & Lynch, 70 Pine Street, NYC, NY 10270.

Cyd Martori is an officer, treasurer, for the corporation Mapleton-Midwood Community Mental Health Board Inc. a.k.a. Mapleton Service a.k.a. Mapleton Supervised Visitation Program located at 1650 Coney Island Avenue, Brooklyn, NY 11230. Represented by Joseph E. Macy, Berkman, Henoch Peterson & Reddy, P.C., 777

Zeckendorf Boulevard, Garden City, NY 11530-2112.

Mark A. Feldman, Esq., doing business at 1717 East 18th Street, Brooklyn, NY, 11229. Represented by Barbara A. Sheehan, Esq., Walsh & Sheehan, 460 Park Avenue, NYC, NY 10022.

Stella Arsenakos, Esq. doing business at 26 Court St., Suite 606, Brooklyn, N.Y. 11242. Pro Se.

Mazal Zirkind, residing at 652 Lefferts Avenue, Brooklyn, NY 11203. Represented by Andrew Plasse, Esq. 225 West 34th. Street, NYC, NY 10122.

Herschel Kurzrock, residing at 1347 48th St, Apt A5, Brooklyn, NY 11219 is being sued personally and as an officer, secretary, of the Rabbinical Alliance of America. Represented by Tomas Greenberger, Esq. 5105 New Utrecht Avenue, Brooklyn, NY 11219.

Mendel Epstein, residing at 531 East 9th Street, Brooklyn, NY 11218. Represented by Tomas Greenberger, Esq. 5105 New Utrecht Avenue, Brooklyn, NY 11219.

Bernadette Cadore, Family Unit Worker, representing the Commissioner of Social Services, Department of Social Services of New York City and the Human Resources Administration of New York City with a serviceable address located at: The Office of Legal Affairs, Human Resources Administration, City of New York, 220 Church Street, Room 637, New York, New York 10013.

Michael Infranco, is the Deputy Commissioner of the Office of Child Support Enforcement, located at 66 Leonard Street, Room 824, NYC, NY 10013. Represented by the City Corporation Counsel, 100 Church Street, NYC, NY 10007.

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TABLE OF AUTHORITIES

The following authorities are cited directly in the petition:

16 Am. Jur. 2d, Constitutional Law, Section 543 15
Columbia Journal of Law: New York's GET Laws: A Constitutional Analysis, Columbia Journal of Law and Social Problems, Fall 1993, Volume 27, Number 1 20
Lynumn v. Illinois, 1963 19

The following statutes are cited directly in the petition:

13th Amendment, Section (1) 19
14th Amendment 15
4th Amendment 15
NYS Civil Rights Laws 15
NYS Domestic Relations Law 240 & 253 20

The following government reports have been cited directly in the petition:

Center for Disease Control Reports 13
NYS Child Support Standards Act [CSSA] Evaluation Project 1993 13
Office of Court Administration Reports 13
(Report of the Chief Administrator of the Courts, Pursuant to Judiciary Law Section 216(5), New York State)

Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies:

These citations are voluminous and are therefore included in the Appendix. They are referenced throughout the petition to

the exhibit number in the appendix.

The Table of Authorities from the Reply to State, [this Appendix, Exhibit 5, (pg 49)] is hereby included by reference.

The Table of Authorities and Citations of Law from the Appeal 98-9461, Appendix, Exhibit 16, (page 301), are hereby included by reference.

The following authorities from Appendix, Exhibit 7:

Cases:

Daubert v. Merrell Dow Pharmaceuticals Inc., 125 L. Ed. 2d 469, 113 S. Ct. 2786 (U.S. June 29, 1993)
.....Appendix, page 130
Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C. Cir. 1923) .....Appendix, page 130

Opinions and Documents:

Ethical Principles of Psychologists and Code of Conduct by the American Psychological Association (APA)
.....Appendix, page 130
Guidelines for Child Custody Evaluations in Divorce Proceedings by the APA ....Appendix, page 130

Other official Government Reports referenced:

US Census Bureau, Current Population Reports, Population Characteristics, Series P-20, No. 461

US Dept of Health and Human Services, Centers for Disease Control and Prevention, Monthly Vital Statistics Report, Vol.

43, No. 9, Supplement, March 22, 1995, tables 18, 19 and 20

PETITION FOR A WRIT OF CERTIORARI

Petitioner Harlow (Givon) Zirkind respectfully prays that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered on October 27, 1999.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit entered an order dated October 27, 1999, in case number 98-9461 [See Appendix, Exhibit 1] upholding the order of the US District Court, Eastern District of New York entered on January 9, 1997 and the corrected order of January 24, 1997 in case number 95-CV-931 [ERK] [See Appendix, Exhibt 2].

JURISDICTION:

Jurisdiction of this court is invoked under Rule 10, subparagraph (a), contending that the United States Court of Appeals for the Second Circuit entered an order dated October 27, 1999, in case number 98-9461 [See Appendix, Exhibit 1] upholding the order entered on January 9, 1997 and the corrected order of January 24, 1997 in case number 95-CV-931 [ERK] of the US District Court, Eastern District of New York [See Appendix, Exhibt 2], which said decision of said appeal has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the lower court, as to call for an exercise of this Court's supervisory power.

As the New York State (NYS) Attorney General (AG) is the attorney on record for several defendants of 95-CV-931 and

98-9461, the NYS AG is therefore being served with a copy of this petition. Therefore, the necessary notifications [to the NYS AG] required by Rule 29.4(b) and/or (c) have been made.

Jurisdiction is also invoked pursuant to the 13th and 14th Amendment of the Federal Constitution as well as 42 USC 1983 and 1985.

STATUTES

Citations of statutes, especially NYS statutes is voluminous and the exact citations have therefore been included in the Appendix, Exhibit 4. Below are the titles of the statutes cited:

FEDERAL CONSTITUTION

Article III Section 2[1]; Amendment XIII Section 1 & Amendment XIV Section 1.

USC TITLE 42;

Section 652; 654 & 655.

NYS CONSITUTION

ARTICLE I

Section 2 & 9.

ARTICLE VI

Section 13 & 18.

ARTICLE XIII

Section 1.

NYS CIVIL RIGHTS LAW

Section 2; 3; 8; 10; 11; 12; 70; 71 & 73.

SOCIAL SERVICE LAWS

Section 29; 397; 444; 446.

NYS FAMILY COURT ACT

Section 145; 812; 842; 827; 828.

NYS JUDICIARY LAW

Section 216; 476-a; 476-b; 476-c; 487.

STATEMENT OF THE CASE

In brief, the nature of the case. The course of the proceedings. Disposition in lower court:

The instant case has its roots in NYS Family Court, King County, docket O-5998/93, V-8536/93 and V-8537/93 [See Appendix, Exhibit 3]. NYS Family Court is a very corrupt court whose officials and entire infrastructure is based upon heinous violations of due process which totally trample upon the 14th Amendment of the federal constitution and the very essence of democracy. The evidence thereto, from official government reports was submitted as part of the federal questions before the district court [and mentioned below, see Appendix, Exhibit 5, Reply to State for Appeal 98-9641, Table of Authorities and the Section, Proof of State Policies

of discrimination in domestic relations, paragraphs number 76 thru 82 inclusive.]. These very same assertions were made during the proceedings of 95-CV-931 USD EDNY and never denied by the defendants.

From the inception of NYS Family Court cases and all throughout the history of the federal case, USD EDNY 95-CV-931 and companion cases challenging the violations of due process and civil rights; there has been numerous, heinous and grotesque violations of due process and civil rights to abuse the courts as a tool of aggression and as a private religious inquisition. This has been facilitated by corrupt and racist court officials on all levels.

The petitioner's appeal USCA 98-9641 USCA, 2nd Cir. is hereby incorporated by reference. [See Appendix, Exhibit 1, petitioner's reply brief.]

HISTORY

NYS FAMILY COURT CASE

The family court case V-8536/-7/93 was decided on January 19, 1995. The pertinent parts of the history of the NYS Family Court case are:

That Judge Karen Burstein never conducted an emergency hearing without any reason given on record as to why Judge Burstein deviated from this legal requirement and due process. [See Appendix, Exhibit 3, initial order of protection.]

That Judge Karen Burstein did not conduct any trial on the merits of the temporary ex-parte order of protection issued within the six month time limit set by law [NYS Family

Court Act (FCA)] [See Appendix, Exhibit 6, Extension notices].

That Judge Karen Burstein extended all the hearings beyond the six month limitation for issuance of a temporary ex-parte order of protection without any reason or evidence of any kind in derogation of the NYS FCA statutes.

That Judge William Rigler denied due process by refusing to hear a habeas corpus on the matter of an unheard family court case as required by NYS statute. [See Appendix, Exhibit 25].

Judge Philip C. Segal never conducted any hearings or no trial of any kind, in derogation of the law. [See Appendix Exhibit 12, Decision NYS Appelate Division]

Judge Philip C. Segal issued an order of protection for 13 years. There is no law in the state of NY that permits such an order of protection. [See Appendix, Exhibit 12, NYS Appellate Division's decision overturning Judge Segal's decision because no such law exists.]

The petitioner maintains that Judge Segal's issuing orders without basis in law, permitting perjury, permitting bribery, aiding and abetting bribery, in his courtroom was partially motivated by the animus of the NYS judiciary towards several classes that the petitioner is a member of. The brutal abuse of discretion by Philip C. Segal is evidence enough that Judge Segal acted as a minister of his own hatred in violation of the 14th Amendment of the federal constitution and his own previous rulings, based upon Lyman v. Illinois [which requires trials and hearings in child custody cases]. Judge Segal's actions can not be misconstrued as judicial discretion in shape, manner or form.

The court appointed psychologist Dr. NG Berrill committed malpractice by submitting a sworn affidavit and psychological evalution with a recommendation denying the petitioner custody and visitation without ever having met the petitioner. [See Appendix, Exhibit 10. All citations and arguements made before the district court are hereby included by reference.] In addition, the petitioner maintained that Dr. Berrill was bribed by the Agunah cult from the Agunah cult's Citibank account# 799133442.

Mazal Zirkind's attorney, Mark A. Feldman, Esq. committed witness tampering by telling the petitioner's subpoenaed witness, Rabbi Israel Kleinman, E.M.T. [Emergency Medical Technician], not to appear in court. [See Appendix, Exhibit 9, Subpoena]. This charge was stated in the Complaint, paragraph 39.

Mark A. Feldman, Esq. demanded on the record that the petitioner be ordered to perform a religious ritual, the Jewish divorce ritual the giving of a 'GET'. The petitioner's attorney stated that the request is unconstitutional and the matter was never openly addressed . [See Appendix, Exhibit 24, copy of transcript], but off the record it was addressed. Most notably, the issue was raised again when Judge Burstein told the court reportor to stop transcribing the testimony of sworn witness -- who was also a rabbi -- and Judge Burstein began asking questions about how to coerce a husband to perform the GET ritual. Judge Burstein stated at that time, "Here [in NYS], we have the GET laws." Former Judge Burstein was referring to NYS Domestic Relation Law 240, 253 and other laws. This fact was raised in the Complaint of 95-CV-931 and never denied by former Judge Burstein.

In addition, despite the fact that Mr. Feldman denied any connection with the Agunah cult; the first bill of costs

submitted to the Family Court before Judge Burstein included charges for consultation time with the so-called *rabbi* Mendel Epstein head of the Agunah cult and known drug money launderer. [No seminary has ever confirmed Mr. Epstein's ordination.] [The petitioner attempted to have witnesses, who were named in writing, testify to Mr. Epstein's money laundering activities. This too was denied by the Magistrate.] After the allegation was made that Mr. Feldman was being paid by the Agunah cult's church Agunah Inc. to maliciously prosecute the petitioner and; the petitioner took this information to the authorities; Mr. Feldman submitted a second bill of costs before Judge Segal, with different monetary charges and deleted his consultations with Mr. Epstein from the bill. The original bill of costs was removed from the record.

The petitioner maintains that the family court case and all family court cases issuing therefrom, were nothing more then a malicious prosecution and abuse of process perpetrated by the respondants as an act of extortion to submit to kangaroo arbitration before the respondants' so-called rabbinical court as well as to consent to an unequitable divorce. [See Appendix, Exhibit 11]

It is brought to the attention of this court that NYS Family Court does **NOT** have original jurisdiction over divorce matters [See Appendix, Exhibit 4, Citations of Law, NYS Constitution, Article IV, Section 13, paragraph b, subsection (2)]. And, neither the petitioner nor the respondant, Mazal Zirkind, filed for divorce, for at least **several years** after the NYS Appeal had been decided. In fact, both parties are still completely married. The petitioner therefore asks: Why then is "divorced" and "ex-wife" written all over the NYS Appellate Division's decision? [See Appendix, Exhibit 12] And, why did the NYS Attorney General use the term "ex-

wife" in responsive papers before the District Court? Quad Errat Demonstratum, that Family Court exceeded its jurisdiction to make a divorce and the NYS judicial machinery did everything in its power to cover-up this excess of jurisdiction and denials of due process.

Also, the respondant and Mr. Feldman cliamed that the petitioner "was going to run off to Israel". This statement was supported by a distortion of a letter from the petitioner's attorney stating the petitioner's **legal** courses of action. [See Appendix, Exhibits 3 & 25] This letter is privileged information and furthermore, was addressed to the petitioner's business, not home in contradiction to the respondant's affirmed affidavit to family court [See Appendix, Exhibit 3]. This letter was inadmissable as evidence, pursuant to the 4th Amendment of the federal constitution and NYS Civil Rights laws [See Appendex, Exhibit 4, Citations of Law, NYS Civil Rights Law (CRL) Section 8]. In addition, it was obtained by tampering with the US mail. As soon as this was brought to the attention of the authorities, the letter disappeared from the file before Judge Burstein and up until the NYS appeal, it was not returned to the file. [The petitioner has not recently checked the file.]

[It is interesting to note, that at the same time that Judge Burstein accepted this inadmissable evidence, Judge Burstein refused to accept a copy of the Child Welfare Association's report stating that investigations found no signs of abuse. [This was submitted as Exhibit 11 of the Motion to Strike Against NYS. See Appendix, Exhibit 14.]

APPEAL OF NYS FAMILY COURT CASE

The decison for Appeal 95-01328, 95-01491, 95-01494 & 95-01497 were entered on August 21, 1995 [See Appendix,

Exhibit 12]. The pertinent parts of the Appeal in the NYS Appellate Division are: 1) The overturning of Judge Segal's order for 13 years exclusion that is based upon no law, for the maximum one year exclusion permitted by law. [NYS FCA 842, See Appendix, Exhibit 4, Citations of Law] 2) Upholding Judge Segal's right to not give the petitioner a hearing and trial.

The petitioner asks all logical persons: If there were no aggravating circumstances, then what signs of abuse were there? And, how could there have been signs of abuse, without aggravating circumstances? And, how could there have been evidence without hearings, testimony of witnesses and trials?

In addition, if family court cases are confidential by statute; then why is the petitioner's full name publicized in a published decision?

DISTRICT COURT CASE 95-CV-931 [ERK]

Those parts of the proceedings pertinent to this writ:

The petitioner filed on August 21, 1995 by US certified mail, return receipt requested an injunction against the Support Enforcement Unit (SEU), Dept. of Social Services (DSS) enjoying the collection of child support. In addition, at that time and with that filing, the petitioner notified the court and the NYS AG, that the NYS AG's motion to dismiss had not been signed. Both the injunction and the matter of the missing signature were malicously misfiled and presented neither to the judge nor magistrate judge for consideration. [Magistrate Caden was the magistrate judge at the time. Subsequently, the case was administratively reassigned to a new Magistrate Cheryl L. Pollack.]

This was no accident. Judge Korman's signature was forged to facilitate interception and altering of the docket sheet.

The Pro Se clerk, to whom all evidence points is M. Ceclia Volk.

A contempt on the matter with all the pertinent respondants was filed with the court [See Appendix, Exhibit 13] and never heard.

M. Cecilia Volk is known for her corruption and similar acts of tampering with the document in similar cases brought against the NYS Office of Court Administration (OCA). I.e. Cases of abject corruption, denials of due process and bribery in family court. M. Cecilia Volk was caught red-handed, by Judge Weinstien [of the Eastern District] altering the docket sheet in a case before Judge Weinstein. That was the case of Sharon Ruddy-Stendardi vs. NYS, et.al. Mrs. Ruddy-Stendardi suffered similar injustices in NYS family and supreme court. As Mrs. Ruddy-Stendardi alleged in the District Court of the Eastern District of New York, and it was never denied, Mrs. Ruddy-Stendardi's husband, ia member of the Gotti crime family, in concert with corrupt NYS OCA officials, bribed M. Cecilia Volk to tamper with Mrs. Ruddy-Stendardi's filings and not docket many of Mrs. Ruddy-Stendardi's papers.

A motion to strike [See Appendix, Exhibit 14] was filed against the NYS AG's unsigned motion to dismiss. This motion was never addressed. The NYS AG had been given ample time, pursuant to the FRCP [as cited in the Appendix, Exhibit 16] to resubmit a signed motion and did not. The District Court never stated any 'good cause' for allowing the NYS AG to deviate from procedure. In addition, as the

petitioner argued before the US Court of Appeals (USCA), the NYS AG relied upon bribery and violations of due process to "win", "fix" the case instead of cogent, viable, legal arguements and procedure.

NYS Family Court Judge Segal was represented by the NYS AG who submitted a motion that contained irreconciable contradicotry statements on the behalf of NYS Family Court Judge Segal. As argued in the appeal before the USCA, Judge Segal committed statutory perjury. [See Appendix, Exhibit 16, Point III, Section B, Paragraph 4, (page 101 of the Appendix)] Although the NYS AG feigned stupidity when responding to this matter, the NYS AG never reconciled the words with the facts and their contradiction:

How could Judge Segal have given a trial and made a decision on motion papers only? And, how could Judge Segal have given a trial, when his decision states that he refused to give the petitioner a trial and will continue to refuse to give the petitioner a trial until the petitioner will go to a psychological evaluation by only one social worker on the planet -- N.G. Berrill? And, how can Judge Segal say he gave the petitioner a trial when the NYS Appellate Division's appeal decision clearly states that Judge Segal did not give the petitioner a trial and upholds Judge Segal's for not having given the petitioner a trial? without citing a law!

In addition, the magistrate had ex-parte communications with the defendants. One example of said ex-parte communications -- but not limited to this occurrence -- occurred on December 19, 1995, when the defendant Mark A. Feldman entered chambers and received an ex-parte order denying the petitioner's injunction against Mr. Feldman [See Appendix, Exhibit 15]. This ex-parte order was challenged at a January 4, 1996 status conferenece, during which the

magistrate conceded to said facts [that the order was ex-parte, and that the magistrate had had ex-parte communications with the defendant] on the record, when the appellant, Harlow Zirkind, stated such facts and contested the ex-parte order.

This ex-parte order facilitated initiating a malicious prosecution NYS Family Court case# V-8536-7/93 against the petitioner -- the legal claim against the petitioner was not permitted by law as the identity of informants of child abuse is confidential by federal and NYS statute [NYS Social Service Law 444. See Appendix, Exhibit 4, Citations of Law, and Exhibit 17]. The arguments of Appendix, Exhibit 16, are hereby included by reference.

This court should note this case, NYS Family Court case# V-8536-7/93, was constantly scheduled to be heard the day before each hearing in the District Court where Judge Segal was a defendant for violating due process. Judge Segal made constant written threats of incarcerating the petitioner. This was mere abuse of process by Judge Segal to "fix" the proceedings of 95-CV-931 and harass the petitioner by lawsuit for the petitioner's lawful claims against Judge Segal.

In addition, this court should note that Judge Segal refused to abide by the law and remove the case to criminal court. [See Appendix, Exhibit 4, Citations of Law, NYS FCA Section 812, paragraph 5].

In addition, as there was no divorce, what does the NYS Family Court petition [Appendix, Exhibit 17] mean by "threaten to return home", especially when the petitioner and respondent are unto this very day still 100% legally married [in spite of the petitioner's attempt to get divorced]. This is only further proof, that family court has been exceeding its

jurisdiction and making sum and substance divorces.

In addition, corrupt NYS court officials had the police of Teaneck, NJ, in their official capacity, attempted to serve the petitioner with a summons to NYS Family Court. The police officers who were ordered to serve the summons, even confessed to the resident of the assumed domicile of the petitioner [See Appendix, Exhibit 26, Copy Affidavit submitted with Injunction against Teaneck Police], that they [the police] had not jurisdiction to serve the summons and did not understand why they [the police] were ordered by their superiors to serve the summons.

As to further contempt issues before the district court: The petitioner had, and still has, a tape recording, contradicting the sworn [affirmed] statement of the defendant, the so-called *Rabbi* Hershel Kurzrock has never met with the petitioner. *Rabbi* Kurzrock's Affirmation in Support of Motion to Disimiss, dated 19th day of July, 1995 paragraph 8, "To the best of my knowledge and recollection , I do not remember having spoken to the plaintiff herein. I never called him and I do not believe he ever called me." I.e. Hershel Kurzrock can not claim that Mr. Kurzrock had never met with the petitioner, when there is a tape recording of approximately one hour's duration of the meeting between the petitioner and Mr. Kurzrock. Said, conversation contains mostly threats that the petitioner must comply with Mr. Kurzrock's arbitration request and sign blanket consent forms "or else". Mr. Kurzrock has yet to be define on the witness stand, what exactly Mr. Kurzrock meant by "or else". A contempt of court motion was filed pertaining to this matter and this contempt motion was also not heard by the district court judge.

In addition, Mark A. Feldman, committed perjury -- as a

defendant before the district court [See Appendix, Exhibit 20]. Mark Feldman made statements in contradiction to fact that Mr. Feldman had not tampered with a subpoaned witness because there had been no subpoenaed witness. Yet, the petitioner produced a subpoena. However, not only did the Magistrate Judge not hold Mr. Feldman in contempt. For no explicable reason, in deviation to the FRCP, the Magistrate Judge, allowed Mr. Feldman to submit new papers -- **NOT A RESPONSE BUT NEW PAPERS** -- to the court correcting Mr. Feldman's initial perjury by simplying deleting the perjurous statements from the record.

The district court adopted the magistrate's recommendation [See Appendix, Exhibit 2] and dismissed the case without prejudice on January 9, 1997, ordering the plaintiff to seek his state remedies. As argued in the appeal before the USCA [See Appendix, Exhibit 16] which is hereby included by reference, the magistrate's recommendation is based upon the summary judgment motions of the defendants. The summary judgment motions of the defendants are based upon perjury, acts of obstruction of justice and forging the Honorable Judge Edward R. Korman's signature to deny the plaintiff due process. Therefore, the petitioner argued before the district court and upon appeal, that the magistrate's recommendation and the following judicial order which are based upon perjury, obstructions of justice and forging the district court judge's signature can not be upheld and should be stricken.

In addition, throughout the federal court proceedings, the petitioner maintained that there had been bribery by the defendants, including but not limited to, the sources of Agunah Inc., the church of the self proclaimed Rabbi Mendel Epstein, from Citibank a/c 79933442 and other bank accounts. [See Appendix, Exhibit 8]. Judge Korman issued an order that this should be investigated. Magistrate Pollak

issued an order to open these bank accounts [See Appendix, Exhibit 8]. With all impunity and abject contempt of court, the defendant, Mark A. Feldman, wrote a letter to Citibank, to disregard the Magistrate's order and Citibank refused to comply.

(During the proceedings of the appeal, the petitioner was able to ascertain that the law guardian, Stella Arsenakos, Esq. defendant, Pro Se, had likewise been bribed by Agunah Inc. and had cashed the check with the supervised visitation center, Mapleton-Midwood Community Health Center, defendant, whose ex-parte appointment had been secured by Stella Arsenakos.) This too was incoporated into the appeal and not denied by Stella Arsenakos.

NYS Civil Rights Cases

Pursuant to the order of 95-CV-931 USD EDNY, the petitioner attempted to file NYS Civil Rights cases pursuant to the NYS Civil Rights Laws and NYS Bill of Rights that is part of the NYS Constitution [See Appendix, Exhibit 4, Citations of Law, NYS Civil Rights Laws, Section 2, 3, 8, 10, 11, 12, 21, 70, 71 & 73] which guarantee the same rights as the 1st, 4th, 13th and 14th Amendments [See Appendix, Exhibit 4, Citations of Law, and Appendix, Exhibit 18, NYS Civil Rights cases]. However, the clerks in NYS Supreme Court refused to file the petitioner's cases, especially the Poor Man Status motions [See Appendix, Exhibit 19, memo refusing to file cases]. This action of refusing to file court cases, in addition to all other denials and violations of due process, demonstrates that the petitioner can not seek any relief of any kind in the NYS court system.

The arguments of these NYS Civil Rights cases, Appendix, Exhibit 18, are hereby incorporated by reference.

APPEAL 98-9461 FROM DISTRICT COURT CASE 95-CV-931

The petitioner filed a Notice of Appeal by US Mail with the district court on January 15, 1997. However, the docketing sheets state the Notice of Appeal was filed Jan. 22, 1997. The Pro Se appellant filed said Notice of Appeal in order to preserve his rights. The Pro Se appellant was fully aware of an order from the US Court of Appeals barring the appellant from filing any appeals with the US Court of Appeals. Therefore concurrently, the appellant filed via US mail a Petition for Leave to Appeal with the US Court of Appeals. This Petition for Leave to Appeal was mailed on January 15th, 1997 and received on January 22, 1997. This petition was granted on or about November 2, 1998: **ALMOST TWO YEARS AFTER THE DISTRICT COURT'S DECISION!** Justice delayed is justice denied. Why was justice delayed?

The appeal [See Appendix, Exhibit 1] was decided on October 25, 1999 denying the petitioner's claims.

FEDERAL QUESTIONS THAT WERE POSED TO THE DISTRICT COURT

There is diversity of citizenship between the petitioner and respondants.

That orders of protection without hearings, evidence and trials are unlawful exile proscribed by the Federal Constitution and Bill of Rights. [See Complaint and Plaintiff's Memorandum of Law 95-CV-931] "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him, nor

send upon him, but by lawful judgement of his peers or by the law of the land." 16 Am. Jur. 2d, Constitutional Law, Section 543. And, the 4th Amendment of the Federal Constitution.

That Judge Burstein violated the 4th Amendment, 14th Amendement and due process clause as well as the NYS Civil Rights laws guaranteeing those very same federal rights.

Diversty of citizenship requires federal intervention for child support collection. The petitioner demanded federal intervention.

In derogation of the federal laws and the corresponding NYS laws (Title 42, Sections: 652, 654 & 655, NYS Social Service Laws 29, & 446. See Appendix, Exhibit 4, Citations of Law), the Support Enforcment Unit [SEU] has no computer records. Evidenced submitted to District Court, Complaint, Exhibit 15 [of the Complaint] – Handwritten account statement.

Also, in derogation of the federal laws and the corresponding NYS laws (Title 42, Sections: 652, 654 & 655, NYS Social Service Laws 29, & 446. See Appendix, Exhibit 4, Citations of Law), SEU has inaccurate records.

That the NYS FCA and orders that require payment by cash or postal money order to SEU, is ridiculous and that ridiculous laws are unconstitutional. And, that said law's only function is to mask the inaccuracies and double, triple billings of SEU.

That in derogation of NYS laws, the Family Court and SEU has refused to recognize NYS laws that prohibit collection of child support from unemployed parents. That the petitioner has been at times an unemployed parent, filed motions for

downward modification and that both the NYS Family Court and SEU have refused to cease and desist from collecting child support at those times.

The Dept. of Social Services [DSS], SEU & Family Court are regularly engaged in extortionate over-assessments. In the instant case, there was extortionate over-assessment because the basis of their collection is an order for which no hearing or trial was conducted and the order issued based upon perjury as well as bribery. An order for taxation for which no hearing or trial was conducted is unconstitutional and a violation of the 13th Amendment, Section 1: As not "a punishment for a crime".

[Although this claim may seem absurd on the face, if one reads the anals of slavery as transcribed in The American Negro, by William Still, a conductor on the Underground Railroad; we find that forced servitude, and having to hire oneself out and give most of the salary to one's master – as the petitioner must – was slavery. Just the possession of the body by law is absent. And, that fining beyond the ability to pay, to ensure forced servitude was a common form of slavery.]

In addition, the NYS Family Court, in derogation of the NYS Family Court Act, did not reckon years of unemployment into the assessment, but only considered the plaintiff's current year salary.

In addition, SEU, in derogation of the NYS Family Court order, has been persistently attempting to collect more than ordered by the court and with all impunity refuses to corrects its records.

NYS Family Court, child support division is operating on a

regular basis in violation of due process as evidenced by the NYS Child Support Standards Act [CSSA] Evaluation Project 1993; Office of Court Administration Reports, Center for Disease Control Reports cited in the Appeal. See Appendix, Exhibit 5.

Twenty percent [18%] of all child support cases have transciprts missing. This allegation was never denied before the district court or US Court of Appeals.

Sixty-six percent [66%] of all cases have an evidenced income being inflated one-hundred fifty [150%] without evidence or explanation by the court. This allegation was never denied before the district court or US Court of Appeals.

Sixty-six percent [66%] of women are **NOT** asked to verify income while only thirty-three [33%] of men are not required to verify income. This allegation was never denied before the district court or US Court of Appeals.

NYS family and divorce courts are awarding less than four percent [4%] paternal custody and eighty percent [80%] maternal custody [ten percent [10%] other, grandparents, state, foster care facilities, etc.] However, the Center for Disease Control [a part of the Dept. Health and Human Services, a part of the Census Bureau] reports that the national average of paternal custody awards is approximately ten percent [10%]. The State of NY is awarding paternal custody a full two-thirds [2/3], sixty-six percent [66%], **BELOW THE NATIONAL AVERAGE** without any explanation of any kind. This allegation was never denied before the district court or US Court of Appeals.

The petitioner is qualified expert in the matter of data analysis, possesses a bachelors and masters of computer science as well as many years of experience in the field and has been retained as computer expert witness in the past. The petitioner is fully qualified to make these data analysis and statistical evaluatoins. This assertion was never denied

before the district court or US Court of Appeals.

The NYS family courts are operating in excess of jurisdiction as established by the NYS Constitution, by making ex-defacto divorces in family court by deciding: custody, child support and property settlement in family court which is effected by orders of protection and over-extended orders of protection. According to the NYS Constitution, only NYS Supreme can grant a divorce and trial by jury in a divorce matter is a right.

That Judge Segal violated the 14th Amendment by denying due process by not giving the petitioner a trial and that a trial is mandatory by NYS law. And; that if -- as the NYS Appealate Division maintains -- that family court has an option of denying a trial in revoking and usurping parental custody then, such a law and process be in contradiction and so repugnant to the federal constitution, humanity [as evidenced by the UN Declaration of Human Rights] and democracy; as well as so outrageous as to render such a law unconstitutional and an abject violation of the 14th Amendment of the federal constitution. Indeed, Judge Segal's actions are in direct contradiction to Lynumn v. Illinois, 1963; which Judge Segal has cited himself, but refuses to comply with in the instant case, in abject disregard for the law and due process. [The UN Declaration of Human Rights is only a declaration and not a treaty. Therefore it is not legally binding upon a participant nation. The United States is not a signatore to the UN Declaration of Human Rights. However, the petitioner presents this declaration as a baseline standard of human rights to parenting, family, fair access to courts and due process.]

That the attorney, Mark A. Feldman, Esq. committed perjury, followed an unconstitutional course of action and violated the 13th Amendment, Section (1), when Mr. Feldman requested an order for fees from NYS Family Court and; submitted contradictory affidavits as to the services

rendered, amount due and the sworn statement that Mr. Feldman's client had never paid Mr. Feldman at all while; Mr. Feldman's retainer agreement with Mazal Zirkind states that Mazal Zirkind has given Mr. Feldman a two thousand five hundred dollar ($2,500-) payment towards a ten thousand dollar ($10,000-) retainer fee. And; that Mr. Feldman violated the 13th Amendment, Section (1) in concert with Judge Segal who never held a hearing on the matter of fees and the contradictory affidavits as required by law.

That the petitioner was denied due process due to the discrimination and animus to men by the NYS judiciary and laws [as evidenced by the OCA reports] as argued in the Complaint [95-CV-931], the Appeal [USCA, 2nd Cir. 98-9461] and the above arguements. [Those arguements in the Complaint and Appeal, 98-9641, are hereby incorporated by reference.] See Appendix, Exhibit 5. Citations, therein included.

That the petitioner was denied due process due to the discrimination and animus to Jews by the NYS judicial system as evidenced by the GET laws a.k.a. the Equitable Distribution Laws, NYS Domestic Relations Law 240. The petitioner hereby incorporates by reference the argument for the unconstitutionality and violation of 1st Amendment rights by the GETS laws as presented in the Columbia Journal of Law: New York's GET Laws: A Constitutional Analysis, Columbia Journal of Law and Social Problems, Fall 1993, Volume 27, Number 1. This reference, all of its arguements and all its citations are hereby incorporated by reference.

The petitioner also claimed in counter-arguments that none of the state actors have 11th Amendment immunity as they have violated 14th Amendment rights. Even if this were [use of the subjunctive tense is emphasized] to have been unknowingly, they are still guilty of 14th Amendment violations. This included Mark A. Feldman, Esq. who definitely followed an unconstitutional course of action and

engaged in criminal violations of due process which can not possibly be misconstrued as "zealously" representing his client. And; who has known ties to the Agunah cult and its church Agunah Inc. from which Mr. Feldman receives funding for his legal services.

That Judge Segal initiated a hopeless conviction [hopeless by statute] and then issued warrants for arrests based upon hopeless convictions and then destroyed those warrants as well as altered the Family Court's records in order to cover-up his abuse of process to deny legal and lawful claims before the district court.

ARGUMENT

Quad Erat Demonstratum, from the inception of the family court case, to the US Court of Appeals, all the proceedings have been riddled with corruption, bribery and outrageous denials of due process. The federal courts are merely burying corruption with denials of due process and simply appear to be covering-up the corruption of the state courts [as argued before the USCA; See Appendix, Exhibit 5 & 16, and said argument is hereby incorporated by reference]. That the USCA refuses to publish this outrageous decision, only butresses the petitioner's claim that the USCA is trying to bury judicial corruption.

Contempt of court motions were filed during the course of the proceedings of USD EDNY 95-CV-931 [ERK] [See Appendix, Exhibits 13 & 20]. Pursuant to the FRCP and other laws cited in the Appeal, [See Appendix, Exhibit 16], a magistrate may conduct preliminary hearings on the matter, but the matter must be heard and decided by a judge. Furthermore, pursuant to the FRCP and other laws cited in the Appeal, [See Appendix, Exhibit 16], should a contempt motion be found true, then any motion for summary judgment

to dismiss is void and the case **MUST GO TO TRIAL**. There is no longer any discretion on the judge's part about dismissing the case. Once found guilty in a contempt hearing, **NO MATTER OF WHAT ISSUE**, the case must proceed to trial.

The reasoning for this law is quite simple. Once a party has been found guilty of any deception of any kind upon the court, then the veracity of all the matters within the court papers and all statements made are suspect. The truth is not known and must be decided upon trial.

The magistrate did hear the arguments concerning these contempt motions on January 4, 1996. Lists of witnesses were submitted to the magistrate [See Appendix, Exhibit 27. This did not include the testimony of the defendants themselves that was going to be requested at the hearing.]. The magistrate took no testimony, although she stated on the record that she would. In addition, as stated on the record, the magistrate did not accept all the evidence as certain evidence had to be accepted by the Honorable Judge Edward R. Korman during a hearing, by the Honorable Judge Edward R. Korman, himself. In addition, it was made clear in written motion papers and on the record that the plaintiff was -- and still is -- in possession of:

a) A copy of a document in the case USD EDNY 95-CV-931 with a **FORGED** signature of the Honorable Judge Edward R. Korman which was forged by the defendants and/or their agents to maliciously and premeditatedly violate due process. Since that incident, that plaintiff has accumulated numerous documents, all evidence of similar violations of due process.

b) A "media recording" contradicting the sworn [affirmed] statement of the defendant, the so-called *Rabbi* Hershel

Kurzrock.

As was made clear in written motion papers by the plaintiff to the court and during hearings before the magistrate and, the magistrate conceded on the record, due to the nature of some of the evidence i.e. the forged signature of the Honorable Judge Edward R. Korman, that the only man able to decide such a matter would the Honorable Judge Edward R. Korman, himself.

In regards to the perjury of the so-called *Rabbi* Hershel Kurzrock in his sworn statement to the court in his motion to dismiss; the Magistrate stated in her recommendation to the court [dated Dec. 20, 1996, pg 36] that "a potential dispute of fact" does appear. However, the disputed fact of "arbitration has no connection to any proceeding before the court." As the defendant has made a misrepresentation upon the court, and that misrepresentation was in a sworn affidavit, then the so-called *Rabbi* **HERSHEL KURZROCK HAS COMMITTED PERJURY UPON THE COURT**. In addition, pursuant to FRCP 56(g), *Rabbi* Kurzrock's motion to dismiss should have been striken in accordance with the law. It is crystal clear to anyone -- one need not be a legal beagle -- to understand the importance of Hershel Kurzrock's behavior and contempt of court, due process and procedure.

If the Magistrate does not understand the relevance to the instant case, that is irrelevant to the law. If the Magistrate does not understand the relevance of the subject of the perjury to the instant case, that is also irrelevant to the law. The matter perjured, the contempt of court, does not even have to be of relevance to the case to be perjury. Once an individual is found to be a liar, perjurer, and to have abject contempt of court, then that individual's motion to dismiss is automatically void and the case involved must proceed to

trial. It is not a matter of judicial discretion or decision if the case may proceed to trial: Pursuant to the cited FRCP, the case must proceed to trial.

To clarify the issue, the petitioner will reiterate that which was stated before the district court as to the relevance of the perjury of *Rabbi* Hershel Kurzrock as well as explain the acts of extortion in detail. Rabbi Kurzrock is accused of conspiring to a malicious prosecution, acts of extortion, especially by an abuse of process and other criminal behavior from which the plaintiff grievously suffered at the hands of Rabbi Kurzrock. All these acts were designed to coerce the petitioner to submit to the so-called rabbinical arbitration which really was nothing more than a demand that the petitioner perform religious rituals for the so-called *rabbis* Hershel Kurzrock and Mendel Epstein as well as to concede to an unequitable divorce settlement whose terms would be stated by Hershel Kurzrock and Mendel Epstein. As niether Mendel Epstein nor Hershel Kurzrock are judges in a court of law, how can they guarantee what a divorce settlement will be? [Every divorce settlement in NYS must be approved by a judge and often, in NYS, items are striken or amended by the judge.]

Mr. Kurzrock denied these allegations and made the statement that "He [Mr. Kurzrock] has definitely never met him [the petitoner]." Thereby, Mr. Kurzrock attempted to absolve himself of any possibility of having engaged in extortion and racketeering as well as never having been at any meeting with the petitioner. Yet, the petitioner is in possession of a media recording of at least one such meeting and several letters from Mr. Kurzrock demanding that the petitioner meet with Mr. Kurzrock. In addition, by looking at the timing of Mr. Kurzrock's letters to the petitioner, the court dates, the filing dates of various court papers as well as

other statements made on the record and other writings by Mazal Zirkind and her attorney of record in NYS Family Court, Mark A. Feldman, Esq; a textbook example of the notorious modus operandi of extortion by malicious prosecution by the so-called *Rabbis* Hershel Kurzrock, Mendel Epstein, the Hellenistic Jewish cult -- the Agunah cult -- Agunah Inc. and their agents becomes clear.

NOTE: Hershel Kurzrock's letters (See Appendix, Exhibit 11) were included in the Complaint as Exhibit 11. After receiving Hershel Kurzrock's first letter (dated Dec. 1, 1992), the petitioner met with Mr. Kurzrock at the time (Dec. 13, 1992) and place Mr. Kurzrock stated on the letter. The tape recording is from that meeting held on Dec. 13, 1992 with Mr. Kurzrock, Mazal Zirkind, her agents and the petitioner attending. The petitioner agreed to nothing at that meeting and signed nothing. The petitioner clearly told Mr. Kurzrock that the petitioner is not a member of Mr. Kurzrock's parish and to cease and desist from harassing the petitioner [by phone and in writing]. In addition, the petitioner told *Rabbi* Kurzrock, as for any divorce rituals, Mr. Kurzrock should refer the petitioner's wife to the petitioner's rabbi and; for formality sake, the petitioner gave Mr. Kurzrock that information, although Mazal Zirkind was in possession of that information already. Subsequently, as stated in the Complaint, the petitioner received, Mr. Kurzrock's last letter demanding that the petitioner reappear before Mr. Kurzrock and submit to Mr. Kurzrock's arbitration is dated, June 1, 1993. As per Mr. Kurzrock's instructions, Mazal Zirkind went to court and initiated her malicious prosecution based upon bribery and perjury on June 1, 1993. The date to confer with Mr. Kurzrock was June 8, 1993, prior to the return date to court June 23, 1993 (See Appendix, Exhibit 11, copies of Mazal Zirkind's petitions to NYS Family Court, also submitted as Exhibit 13 of the Complaint). Mr. Kurzrock,

Mazal Zirkind and their agents, all told the petitioner that they will drop the charges and allow the petitioner to see his children if the petitioner will agree to arbitration before Hershel Kurzrock and if the petitioner will agree to whatever divorce agreement Mr. Kurzrock draws up as well as pay Mr. Kurzrock negotiation fees for the "negotiation" of the divorce settlement as well as Mazal Zirkind's attorney fees.

As the "Rabbi" of Mazal Zirkind, does Mazal Zirkind emulate her so-called "rabbi's" behavior? Has Mazal Zirkind committed perjury upon the court also?

Did Mark A. Feldman, Esq. legal attache of the Agunah cultist rabbi and Hershel Kurzrock's so-called Rabbinical court and his co-cultist "Rabbi" Mendel Epstein, commit perjury upon the district court also?

These are all matters to be discussed and adjudicated at trial, by jury.

In spite of these extremely serious allegations, including but not limited to the forgery of the Honorable Judge Edward R. Korman's signature and the affirmative recommendation of the Magistrate Cheryl L. Pollak, for whatever reason, not one contempt of court motion was ever heard by the Honorable Judge Edward R. Korman during the instant case.

In addition, during the proceedings of the appeal, the petitioner filed several motions to strike and deny motions to appeal. See Appendix, Exhibit 21. The arguements in these motions are hereby incorporated by reference. Those appellants were given sufficient time to respond and did not. They were all attorneys. There is no excuse for allowing an extension of time. None was asked for. And, no reason was stated by the court. Mr. Greenberger even told the court -- by

written letter -- that he was not going to file a response and then, after the filing deadline, filed a response. As for Mark Feldman, again Mr. Feldman, Esq. was given multiple opportunities to respond to the court. When his responses were ludicrous and insufficient, the rules were violated and he was able to have an attorney file totally new responses -- after the filing deadline.

To stress just how the federal and state courts are working in collusion to deny the petitioner due process and his rights as well as politically persecute the petitioner:

At the conclusion of the Appeal 98-9461, on October 25, 1999, the very same day the USCA reached its decision, a child support case against the petitioner was decided [See Appendix, Exhibit 22]. Another coincidence? And, on or about the day that the District Court denies an injunction on the matter, Oct. 29, 1999, Mendel Epstein again, has one of his rabbinical courts send the petitioner another letter demanding that the petitioner appear before their rabbinical court and perform religious rituals as well as "to make a civil divorce". On the same day that the petitioner refuses to appear and perform religious rituals, then, the support court issued a warrant for the petitioner's arrest. Again, the initiation of faimily court proceedings is exactly timed with the petitioner's refusal to appear before a bogus rabbinical court of Mendel Epstein for an extortionate, unequitable divorce settlement!

Resolution to an interstate child support issue was not sought in the proper venue of federal court. Again, the petitioner's contempt motion in state court was neither addressed nor heard [See Appendix, Exhibit 23]. Again, the state court, refused to address the issue of the constitutionality of its actions. Again, the court had deviated from procedure and

not affixed it's seal to alleged court orders. Only after suing about the absence of a seal in federal court, did the state court deign to comply with its own laws. [See Appendix, Exhibit 24] Again, due process had been denied.

In addition, this court should note, that the actions of Mark A. Feldman, Esq. and Philip C. Segal taint all members of the bar and; the active inaction against bringing Philip C. Segal to justice, taints all judges.

This court should bear in mind, that this seriously aggreived citizen has no criminal record of any kind, no points on his drivers license and not even outstanding parking tickets. The only legal issues against this aggreived citizen is the aggravated harrassment by lawsuit and hopeless convictions of NYS Family Court. Even the orders of protection issued by NYS Family Court, by statute [NYS FCA 828(2), See Appendix, Exhibit 4, Citations of Law], are considered "not findings of wrong doing" precisely because they are issued without evidence, hearings and facts.

Wherefore, the petitioner, a gravely aggreived citizen respectfully requests that this court:

1. Exercise its supervisory powers in the face of many acts of corruption and denials of due process and order the district to hold the contemptors in contempt and punish the contemptors with fines, jail terms and sanctions and;
2. To order the district court to conduct contempt of court hearings to publicly expose the contemptors in an open courtroom, open to the public and press, for the contemptors heinious violations of due process and;
3. Order the respondants motions to dismiss striken and squashed and;
4. Order the production of financial records so ordered by

Judge Korman and Magistrate Pollak and;

5. If the financial records have been "lost" over the five (5) year delay in compliance with the Notice to Produce, then the claims of bribery thereto, should be assumed true and;
6. Order the deposition of witness whose depositions had been requested of the court and;
7. Order the district court to immediately conduct a trial by jury on the matters before the court and;
8. Order the recusal Magistrate Pollak from the case and;
9. Order the respondants to pay for the cost of this petition, being it so ridiculous that the petitioner should have to seek the aid of the US Supreme Court for the most basic elements of due process and;
10. Grant the petitioner, the Order of Protection requested before the district court, against the State of NY, the police of New York City, especially the 66th & 70th Precincts, SEU, DSS and the family courts of NYS and;
11. Any other relief this court deems proper.

Harlow Zirkind
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

Exhibit 1 – Order, USCA 98-9461 5

Exhibit 2 – Order, USD EDNY 95-CV-931 [ERK] 9

Exhibit 3 – NYS Family Court orders: O-5998/93; V-8536/93; and V-8537/93 [Complaint, Exhibit 12]. 12

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Amendment XIII 16
Amendment XIV 16
Title 42 16
Section 652. Duties of Secretary 16
Section 654. State plan for child and spousal support 18
Section 655. Payments to States 20
NYS Consitution 20
Article I 21
Section 2 [Right to trial by jury; waiver thereof.] 21
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Article VI 23
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Section 2. Supreme sovereignty in the people. 26
Section 3. Levying taxes and charges. 26
Section 8. Right of search and seizure. 26
Section 10. Justice to be administered without favor and speedily.26
Section 11. Fines must be reasonable and imposed only for cause.27
Section 12. Rights of persons accused of crime. 27
Section 70. Vexatious suits. 27
Section 71. Damages in action for suing in name of another. 28
Section 73. Code of fair procedure for investigating agencies. 28
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Section 29. Federal agency. 32
Section 397. Powers and duties of public welfare officials in relation to children. 32
Section 444. Confidentiality of records; related matters. 34
Section 446. Statewide automated child welfare information system. 36

NYS Family Court Act 37
Section 145. Liability of judge. 37
Section 812. Procedures for family offense proceedings. 37
Section 842. Order of protection. 39
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Section 216. Additional duties of the chief administrator; certain cases. 44
Section 476-a. Action for unlawful practice of the law. 45
Section 476-b. Injunction to restrain defendant from unlawful practice of the law. 46
Section 476-c. Investigation by the attorney-general. 46
Section 487. Misconduct by attorneys. 47

Exhibit 5 -- Reply to State, USCA 98-9461. 49

Exhibit 6 – Extension of hearing notices, NYS Family Court, case# O-5998/93; V-8536/93; and V-8537/93. 105

Exhibit 7 – USD 95-CV-931 EDNY, Opposition Papers to NG Berrill 115

Exhibit 8 – USD 95-CV-931 EDNY, Request for financial disclosure of Agunah Inc. and; motion stating NG Berrill was bribed by Agunah Inc. 165

Exhibit 9 – Copy of subpoena issued during the proceedings of NYS Family Court case# O-5998/93; V-8536/93; and V-8537/93 and; Mark A. Feldman's reply that Mr. Feldman had not tampered with said witness. 167

Exhibit 10 – Copy of transcript before Judge Karen Burstein where Mark A. Feldman, Esq. demanded that the court order the petitioner to perform a religious divorce ritual [Complaint, Exhibit 11]. 170

Exhibit 11 – Rabbi Herschel Kurzrock's letter to the petitioner demanding that the petitioner submit to arbitration before Mr. Kurzrock [Complaint, Exhibit 12]. 172

Exhibit 12 – Decision NYS Appeal 95-01328, 95-01491, 95-01494, & 95-01497; Published, 630 NY Supp. 2d Series, pg 570 175

Exhibit 13 – Contempt Motion against M. Cecilia Volk and other defendants, as well as Judge Philip C. Segal, brought before USD 95-CV-931 EDNY 180

Exhibit 14 – Motion to Strike, brought before USD 95-CV-931 EDNY 189

Exhibit 15 – Mark Feldman's letter to Magistrate Pollak and Magistrate Pollak's ex-parte order both dated December 19, 1995. The court should note, that Magistrate's order was written in pen, in the bottom left hand corner of Mark Feldman's letter. 288

Exhibit 16 – USCA, Appeal #98-9461, Appellee's Brief 291

Exhibit 17 – NYS Family Court case V-8536-7/95 initiated by Judge Segal during the proceedings of USD 95-CV-931 EDNY 331

Exhibit 18 – Petitioner's New York State, Civil Rights Cases 336

Exhibit 19 – Handwritten note, undated, from New York State court clerks refusing to file Petitioner's NYS Civil Rights Cases 384

Exhibit 20 – Contempt Motion against Mark A. Feldman, brought before USD 95-CV-931 EDNY 385

Exhibit 21 – Motions to strike, filed during the course of USCA Appeal, 98-9461. 393

Exhibit 22 – NYS Family Court Child Support case F-22519/93C against petitioner. Notice one copy without a seal of the court and judicial signature and; one copy with a seal of the court and judicial signature. 408

Exhibit 23 – Contempt motion brought against Micheal Infranco, Deputy Commissioner of the Support Enforcement Unit during the proceedings of NYS Family Court Support case# F-22519/93C 415

Exhibit 24 – Transcript, June 1, 1993, Brooklyn Family Court [Complaint, Exhibit 12] 419

Exhibit 25 – Motion to Join Judge William Rigler, This motion was granted by Magistrate Caden at the 1st status conference on or about June 13, 1995. **421**

Exhibit 26 – Affidavit from Mrs. Evelyn Zirkind that the Teaneck policmen stated they have no jurisdiction to serve NYS court papers. **426**

Exhibit 27 – Letter to Magistrate Pollack, naming specific witnesses to testify in contempt hearings and other pertinent evidence to substaniate claims. **427**

Exhibit 1 – Order, USCA 98-9461

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF HTIS OR ANY OTHER COURT INA SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Secopnd Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 27 day of October, one thousand nine hundred and ninety-nine.

Present:

Hon. Roger J. Miner,
Hon. Dennis Jacobs,
Hon. Fred I. Parker,
Circuit Judges

Seal Affixed:
United States Court of Appeals
Filed
October 27, 1999
Karen Greve Milton, Acting Clerk
Second Circuit

----------X

Harlow Zirkind, plaintiff--appellant

- v. - 98-9461

MAZAL ZIRKIND; STATE OF NEW YORK; E. LEO MILONAS, Hon., Office of Court Administration, Chief Administrative Justice; PHILIP C. SEGAL; KAREN BURSTEIN; N.G. BERRIL; MICHAEL INFRANCO, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does; MARK A. FELDMAN, ESQ.; STELLA ARESNAKOS; HERSCHEL KURZROCK, Secretary for Rabbincal Alliance of America; MENDEL EPSTEIN; NICHOLAS CHIMIENTI; MPLETON-MIDWOOD COMMUNITY MENTAL BOARD, INC. a/k/a MAPLETON SERVICE, CYD MARTORI, Treasurer; BERNADETTE CADORE, Representative of Commissioner of Social Services, Department of Social Services of New York and Human Resources Administration of New York City,

Defendants-Appellants

----------X

Appeal from the United States District Court for the Eastern District of New York (Korman, J.)

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgement of said District Court be and it hereby is AFFIRMED.

Harlow Zirkind filed a complaint under 28 USC 1983 and 1985 against numerous defendants,seeking to allege claims arising out of a New York State Family Court proceeding involving the custody, visitation and financial support of his children. He also filed serval motions for orders of contempt

of court misrepresentation and perjury.

The magistrate judge to hom the case was assigned recommended that the district court grant the defendants' motion to dismiss pursuant to FRCP 12(b)(1) or, alternatively 12(b)(2), finding that (1) the court lacked subject matter jurisdiction over Zirkind's claims because they involved a dispute over domestic relations issues an raised factual questions concerning custody and visitation rights; and (2) even if there were federal jurisdiction, Zirkind's complaint was subject to dismissal for failure to state a claim as to each defedant. The district court granted the motion. Adoptiong the magistrate judge's recommendation, the district court also denied Zirkind's contempt motions.

On appeal, Zirkind argues, inter alia, that (1) the district judge improperly adopted the magitrate judge's recommendation regarding his contempt motions without conducting an evidentiary hearing, and (2) the magistrate judge should have recused herself following imporper ex parte communications wih Mazal Zirkind's lawyer.

The district court properly adopted the magistrate judge's recommednation that Zirkind's motion for orders of contempt of court be denied because he failed to allege facts sufficient to constitute a contempt of court. See 28 USC 636(e); Stein Indus. Inc. v. Jarco Indus Inc. 33 F. Supp. 2d 163, 165 (EDNY) 1999. Moreover, Zirkind has failed to state specific facts indicatin that the magistrate judge engaged in ex parte communications warranting recusal. See Power Auth. v. Federal Engergy Regulatory Comm'n, 743 F. 2d 93, 110 (2d. Cir. 1984).

Accordingly we AFFIRM the judgment for substantially the reason sstated by the distrcit court as enunciated in the recommnedations of Magistrate Judge Cheryl Pollak.

The appellant's motion to file additional reply briefing is granted; appelant's motions to strike briefs filed by three of the appellees, to deny them oral argument, and to enter a default against them are denied.

Exhibit 2 – Order, USD EDNY 95-CV-931 [ERK]

UNITED STAETS DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

HARLOW ZIRKIND, Plaintiff

-against- JUDGMENT

STATE OF NEW YORK, et. al., 95-CV-0931 (ERK)

Defendants

----------X

A corrected order of Honorable Edward R. Korman, Untied States District Judge, having been filed on January 10, 1997, adopting the December 20, 1996 Report and Recommendation of Magistrate Judge Cheryl L. Pollak dismissing, with prejudice, plaintiff's federal claims as to each defendant; dismissing, without prejudice, plaintiff's pendant state law claims; and denying each of plaintiff's motions for preliminary injunction or contempt, iti is

ORDERED and ADJUDGED that plaintiff take nothing of the defendants; that the December 20, 1996 Report and Recommendations of Magistrate Judge Cheryl L. Pollak is adopted; that plaintiff's federal claims are dismissed without prejudice as to each defendant' that plaintiff's pendant state law claims are dismissed without prejudice; and, that each of plaintiff's motions for preliminary injunction or contempt is denied.

Dated: Brooklyn, New York
January 24, 1997

/s/
Robert C. Heinemann
Clerk of Court

UNITED STAETS DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

HARLOW ZIRKIND, Pro Se

-vs- CORRECTED ORDER

STATE OF NEW YORK, et. al., CV-95-931

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KORMAN J.

The recommendation of the United States Magi8strate Judge, dated December 20, 1996 is adopted. Plaintiffs federal claims are dismissed with prejudice as to each defendant, plaintiffs pendant state law claims are dismissed without prejudice, and each of plaintiffs motions for preliminary injunction or contempt is denied.

SO ORDERD

/s/
EDWARD R. KORMAN, U.S.D.J.

DATED: Brooklyn, N.Y.
January 9, 1997

Exhibit 3 – NYS Family Court orders: O-5998/93; V-8536/93; and V-8537/93 [Complaint, Exhibit 12].

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS FORM
[illegible]

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MAZAL ZIRKIND, Petitioner

DOCKET NO.

-against-

O5998/93

HARLOW ZIRKIND, Respondent

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TO THE FAMILY COURT:

The undersigned Petitioner respectfully shows that:

1. Petitioner resides at 785A East 8th Street
   County of Kings, State of New York
   (a) and is the spouse of Respondent
   (b) and has a child in common with Respondent

1. Respondent resides at 785A East 8th Street
   County of Kings, State of New York

2. Upon information and belief, on or about 26th May, 1993, at 785A East 8th Street, the Respondent committed an act or act which constitutes. DID ALLEGEDLY ON THE ABOVE DATE BEGIN ARGUING WITH THE PETR. PETR. STATES THAT RESP. WAS BOTH VERBALLY AND PHYSICALLY ABUSIVE TOWARDS HER IN THE PRESENCE OF HER CHILDREN. RESP. WAS UPSET DUE TO THE FACT THAT HE OPPOSED PETR.'S TAKING SAID CHILD TO SYNAGOGUE. RESP. BECAME EXTREMELY

VIOLENT AND PUSHED RESP. SINGLEHANDEDLY AND WITH THE OTHER HAND THREW HER FIVE YEAR OLD SON AGAINST A WALL. RESP. FURTHER STATES THAT HER CHILDREN ARE TERRIFIED OF THE RESP. WHEN HE BECOMES ENRAGED. PETR.'S SIX YEAR OLD SON WRITES NOTES TO HIS TEACHERS PLEADING FOR "HELP" BECAUSE HIS FATHER IS MEAN TO HIM. PETER. DISCOVERED A LETTER IN HER HOUSEHOLD **FROM AN ATTORNEY** IN ISRAEL ADVISING RESP. TO ABSCOND WITH HIS CHILDREN PRIOR TO PETR.'S OBTAINING EITHER CUSTODY OR DIVORCE ORDER AWARDING CUSTODY IN ORDER TO AVOID BEING IMPRISONED. PETR. IS FEARFUL OF THE RESP. WHO HAS A HISTORY OF ABUSING HER. PETR. IS IN THE PROCESS OF FILING FOR A DIVORCE FROM RESP. WHO IS UNREASONABLE AND IRRATIONAL. PETR. REQUESTS AN O.P. TO RESTRAIN THE RESP. FROM COMING ANYWHERE NEAR HER, HER CHILDREN OR THE HOUSEHOLD ITSELF. PETR. ALSO REQUESTS THAT RESP. BE EXCLUDED FROM THE MARITAL HOME. RESP. NOT TO TELEPHONE RESP.

/S/
Mazal Zirkind
DATED: June 1, 1993

FAMILY COURT OF THE STATE OF NEW YORK
General Form 17
COUNTY OF KINGS

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MAZAL ZIRKIND, Petitioner

DOCKET NO.

-against- V-8536/93

HARLOW ZIRKIND, Respondent V-8537/93

----------X

TO THE FAMILY COURT:

The undersigned Petitioner respectfully shows that:

1. Petitioner resides at 785A East 8th Street County of Kings, State of New York
2. Petitioner is natural mother.
3. ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...
10. There has been a change of circumstances since entry of the (order) (judgement) (custody) (visitation) in that: PETR. HAS BEEN FORCED TO FILE FOR AN O.P. DUE TO RESP.'S VIOLENT TEMPER. RESP. HAS THREATENED AND ALSO SOUGHT LEGAL COUNSEL PERTAINING TO ABSCONDING TO ISRAEL W/CHILD. PETR. IS FEARFUL RESP. MAY MAKE GOOD ON HIS THREATS.
11. ...
12. ...

/s/

Mazal Zirkind
DATED: June 1, 1993

Federal Constitution

Article III

Section 2 [1] The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ... to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; ...

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIV

Section 1. [...] nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42

Section 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties. The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall -

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child

support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(A)

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(G) data, by State, on the use of Federal courts and on use

of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I)

(d) Child support management information system.

(B) contains a description of the proposed management system referred to in section 654(16) of this title, including a description of information flows, input data, and output reports and uses,

Section 654. State plan for child and spousal support

A State plan for child and spousal support must -

(D) in carrying out other functions required under a plan approved under this part;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the

accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing

with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

Section 655. Payments to States

(d) State reports. Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

NYS Consitution

Article I

Section 2 [Right to trial by jury; waiver thereof.]

Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver.

Section 9 [Right to peaceably assemble and petition.]

1. No law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; except as hereinafter provided, no lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature, the net proceeds of which shall be applied exclusively to or in aid or support of education in this state as the legislature may prescribe, and except pari-mutuel betting on horse races as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government, shall hereafter be

authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this
section.

2. Notwithstanding the foregoing provisions of this section, any city, town or village within the state may by an approving vote of the majority of the qualified electors in such municipality voting on a proposition therefor submitted at a general or special election authorize, subject to state legislative supervision and control, the conduct of one or both of the following categories of games of chance commonly known as: (a) bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random; (b) games in which prizes are awarded on the basis of a winning number or numbers, color or colors, or symbol or symbols determined by chance from among those previously selected or played, whether determined as the result of the spinning of a wheel, a drawing or otherwise by chance. If authorized, such games shall be subject to the following restrictions, among others which may be prescribed by the legislature: (1) only bona fide religious, charitable or non-profit organizations of veterans, volunteer firemen and similar non-profit organizations shall be permitted to conduct such games; (2) the entire net proceeds of any game shall be exclusively devoted to the lawful purposes of such organizations; (3) no person except a bona fide member of any such organization shall participate in the management or operation of such game; and (4) no person shall receive any remuneration for participating in the management or operation of any such game. Unless otherwise provided by law, no single prize shall exceed two hundred fifty dollars, nor shall any series of prizes on one occasion aggregate more than one thousand dollars. The legislature shall pass appropriate laws to effectuate the purposes of this

subdivision, ensure that such games are rigidly regulated to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and the diversion of funds from the purposes authorized hereunder and establish a method by which a municipality which has authorized such games may rescind or revoke such authorization. Unless permitted by the legislature, no municipality shall have the power to pass local laws or ordinances relating to such games. Nothing in this section shall prevent the legislature from passing laws more restrictive than any of the provisions of this section.

Article VI

Section 13 [Family court; composition; jurisdiction.]

a. The family court of the state of New York is hereby established. It shall consist of at least one judge in each county outside the city of New York and such number of additional judges for such counties as may be provided by law. Within the city of New York it shall consist of such number of judges as may be provided by law. The judges of the family court within the city of New York shall be residents of such city and shall be appointed by the mayor of the city of New York for terms of ten years. The judges of the family court outside the city of New York, shall be chosen by the electors of the counties wherein they reside for terms of ten years.

b. The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: (1) the protection, treatment, correction and commitment of those minors who are in need of the exercise of the authority of the court because of circumstances of neglect, delinquency or dependency, as the legislature may

determine; (2) the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; (3) the adoption of persons; (4) the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; (5) the establishment of paternity; (6) proceedings for conciliation of spouses; and (7) as may be provided by law: the guardianship of the person of minors and, in conformity with the provisions of section seven of this article, crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household. Nothing in this section shall be construed to abridge the authority or jurisdiction of courts to appoint guardians in cases originating in those courts.

c. The family court shall also have jurisdiction to determine, with the same powers possessed by the supreme court, the following matters when referred to the family court from the supreme court: habeas corpus proceedings for the determination of the custody of minors; and in actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage, applications to fix temporary or permanent support and custody, or applications to enforce judgments and orders of support and of custody, or applications to modify judgments and orders of support and of custody which may be granted only upon the showing to the family court that there has been a subsequent change of circumstances and that modification is required.

d. The provisions of this section shall in no way limit or impair the jurisdiction of the supreme court as set forth in section seven of this article.

Section 18 [Trial by or without a jury; claims against the

state.]

a. Trial by jury is guaranteed as provided in article one of this constitution. The legislature may provide that in any court of original jurisdiction a jury shall be composed of six or of twelve persons and may authorize any court which shall have jurisdiction over crimes and other violations of law, other than crimes prosecuted by indictment, to try such matters without a jury, provided, however, that crimes prosecuted by indictment shall be tried by a jury composed of twelve persons, unless a jury trial has been waived as provided in section two of article one of this constitution.

b. The legislature may provide for the manner of trial of actions and proceedings involving claims against the state.

Article XIII

Section 1 [Oath of office; no other test for public office.]

Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall. before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of ....., according to the best of my ability;" and no other oath, declaration or test shall be required as a qualification for any office of public trust, except that any committee of a political party may, by rule, provide for equal representation of the sexes on any such committee, and a state convention of a political party, at which candidates for public office are nominated, may, by rule, provide for equal representation of the sexes on any committee of such party.

Section 2. Supreme sovereignty in the people.

No authority can, on any pretense whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

Section 3. Levying taxes and charges.

No tax, duty, aid or imposition whatsoever, except such as may be laid by a law of the United States, can be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and no citizen of this state can be by any means compelled to contribute to any gift, loan, tax, or other like charge, not laid or imposed by a law of the United States, or by the legislature of this state.

Section 8. Right of search and seizure.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants can issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 10. Justice to be administered without favor and speedily.

Neither justice nor right should be sold to any person, nor denied, nor deferred; and writs and process ought to be granted freely and without delay, to all persons requiring the same, on payment of the fees established by law.

Section 11. Fines must be reasonable and imposed only for cause.

No citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offense.

Section 12. Rights of persons accused of crime.

In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. An alien is not entitled to a jury, composed in part of aliens or strangers, in an action or special proceeding civil or criminal.

Section 21. No imprisonment for non-payment of money pursuant to judgment or order requiring payment of money due upon contract.

Except in a case where it is otherwise specially prescribed by law, a person shall not be arrested or imprisoned for disobedience to a judgment or order, requiring the payment of money due upon a contract, express or implied, or as damages for non-performance of a contract.

Section 70. Vexatious suits.

If a person vexatiously or maliciously, in the name of another but without the latter's consent, or in the name of an unknown person, commences or continues, or causes to be commenced or continued, an action or special proceeding, in a court, of record or not of record, or a special proceeding before a judge or a justice of the peace; or takes, or causes to

be taken, any proceeding, in the course of an action or special proceeding in such a court, or before such an officer, either before or after judgment or other final determination; an action to recover damages therefor may be maintained against him by the adverse party to the action or special proceeding; and a like action may be maintained by the person, if any, whose name was thus used. He is also guilty of a misdemeanor, punishable by imprisonment not exceeding six months.

2. The right to bring an action under this section can be waived only if it is waived specifically.

3. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.

Section 71. Damages in action for suing in name of another.

In an action, brought by the adverse party, as prescribed in the last section, the plaintiff, if he recovers final judgment, is entitled to recover treble damages. In an action, brought by the person whose name was used, as prescribed in the last section, the plaintiff is entitled to recover his actual damages, and two hundred and fifty dollars in addition thereto.

Section 73. Code of fair procedure for investigating agencies.

1. As used in this section the following terms shall mean and include:

(a) "Agency". A standing or select committee of either house of the legislature or a joint committee of both houses; a

duly authorized subcommittee of any such legislative committee; the commissioner of investigation acting pursuant to section eleven of the executive law; a commissioner appointed by the governor acting pursuant to section six of the executive law; the attorney general acting pursuant to subdivision eight of section sixty-three of the executive law; any temporary state commission or any duly authorized subcommittee thereof which has the power to require testimony or the production of evidence by subpoena or other compulsory process in an investigation being conducted by it; and any standing or select committee, or subcommittee thereof, of the constitutional convention to be held in the year nineteen hundred sixty-seven.

(b) "Hearing". Any hearing in the course of an investigatory proceeding (other than a preliminary conference or interview at which no testimony is taken under oath) conducted before an agency at which testimony or the production of other evidence may be compelled by subpoena or other compulsory process.

(c) "Public hearing". Any hearing open to the public, or any hearing, or such part thereof, as to which testimony or other evidence is made available or disseminated to the public by the agency.

(d) "Private hearing". Any hearing other than a public hearing.

2. No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of this section, and a general statement of the subject of the investigation. A copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the agency upon request therefor by the person

summoned.

3. A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the agency shall ask the witness such of the questions as it may deem appropriate to its inquiry.

4. A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

5. A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record of the investigatory proceeding.

6. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the agency or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either to appear personally

before the agency and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative at the option of the agency, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

7. Nothing herein contained shall be construed to prevent an agency from granting to witnesses appearing before it, or to persons who claim to be adversely affected by testimony or other evidence adduced before it, such further rights and privileges as it may determine.

8. Except in the course of a subsequent hearing which is open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview conducted before a single-member agency in the course of its investigation shall be disseminated or made available to the public by said agency, its counsel or employees without the approval of the head of the agency. Except in the course of a subsequent hearing open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview before a committee or other multi-member investigating agency shall be disseminated or made available to the public by any member of the agency, its counsel or employees, except with the approval of a majority of the members of such agency. Any person who violates the provisions of this subdivision shall be guilty of a misdemeanor.

9. No temporary state commission having more than two members shall have the power to take testimony at a public or private hearing unless at least two of its members are present at such hearing.

10. Nothing herein contained shall be construed to effect, diminish or impair the right, under any other provision of law, rule or custom, of any member or group of members of a committee or other multi-member investigating agency to file a statement or statements of minority views to accompany and be released with or subsequent to the report of the committee or agency.

Social Service Laws

Section 29. Federal agency.

The department, with the approval of the governor, may accept a designation from, and act as, the agent of the federal security agency or other duly authorized federal agency in the administration of relief and related activities, activities affecting the welfare of individuals and communities, and the disbursement or expenditure of federal funds or commodities in relation thereto within the state of New York.

Section 397. Powers and duties of public welfare officials in relation to children.

All social services officials responsible for the administration of home relief to families shall, in relation to all children in such families other than delinquent children, persons in need of supervision, mentally disabled children, physically handicapped children and children born out of wedlock who shall be cared for under the provisions of the following section, have powers and perform duties as follows:

1. As to destitute children:

(a) Investigate the family circumstances of each child reported as destitute in order to determine what care,

supervision or treatment, if any, such child requires.

(b) Administer and supervise relief to families with destitute children when such families are unable to care for such children and relief is necessary to prevent the separation of children from their parents.

(c) Furnish children, whose parents or guardians are unable to do so, with suitable clothing, shoes, books, food and other necessaries to enable them to attend upon instruction as required by law.

2. As to neglected and abused children:

(a) Investigate complaints of neglect and abuse of children and offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible.

(b) Bring such case when necessary before the family court for adjudication.

(c) Institute proceedings in a court of competent jurisdiction against a parent or adult for neglect or abuse of a child.

3. Provide any necessary medical or hospital care for such children when responsible for the provision of such care under section sixty-nine.

4. The provisions of this section shall not be deemed to confer on public welfare officials responsible only for the authorization of home relief or of home relief and hospital care, any powers and duties in relation to destitute and neglected children except as follows:

(a) As to destitute children:

(1) Authorize relief to families with destitute children when such families are unable to care for such children and relief is necessary to prevent the separation of children from their parents.

(2) Furnish children, whose parents or guardians are unable to do so, with suitable clothing, shoes, books, food and other necessaries to enable them to attend upon instruction as required by law.

(b) As to neglected and abused children:

Report to the county commissioner any complaint they may receive of neglect and abuse of children.

(c) Provide any necessary medical care or hospital care for such children when responsible for the provision of such care under section sixty-nine.

Section 444. Confidentiality of records; related matters.

1. The department in consultation with the advisory committee shall make regulations;

(a) protecting the confidentiality of individual identifying information submitted to or provided by the service, and preventing access thereto, by, or the distribution thereof to, persons not authorized by law;

(b) setting forth procedures for informing any child or his representative of the nature of the system and its uses;

(c) allowing any child or his representative or any member of his family, an opportunity to review any information

pertaining to such child or family and to request that any part of such information be amended or expunged; and

(d) providing that the service shall remove from its records and expunge the individual identifying information, excluding non-identifying child or family data to be used for historical purposes, concerning any child who has been discharged from care.

2. Prior to final promulgation of any regulations as described in subdivision one of this section, the department shall, in addition to complying with all other advance notice requirements make proposed regulations available to all state agencies charged with the administration or supervision of child care programs and to local government agencies and persons that have expressed an interest in safeguarding information maintained by the service, and shall provide such agencies with an opportunity to comment on the proposed regulations. In promulgating final regulations the department shall consider any comments received.

3. Any persons wilfully violating or failing to comply with the provisions of subdivision one of this section or wilfully violating or failing to comply with any regulation which the department is authorized under such subdivision to make, shall be guilty of a misdemeanor.

4. The regulations promulgated pursuant to subdivision one of this section, shall provide that the information compiled and maintained by the service pursuant to paragraph (d) of subdivision ten of section four hundred forty-two of this title shall be subject to the confidentiality provisions of title six of this article.

Section 446. Statewide automated child welfare information system.

(1) The department shall promulgate regulations required to implement federal requirements for the establishment and administration of a statewide automated child welfare information system as required by applicable federal statute and regulation. The regulations shall set forth standards for the timely submission of data elements relating to child welfare services, including foster care, adoption assistance, preventive services, child protective services and other family preservation and family support services.

(2) The statewide automated child welfare information system shall be designed to improve convenience to consumers of services and reduce the administrative burden of child welfare workers of social services districts and their contracted agencies which provide direct services. The statewide automated child welfare information system shall be designed to provide computers to the majority of individual child welfare workers of social services districts and their contracted agencies which provide direct child welfare services, allow such workers and agencies to communicate with and enter information directly into the statewide automated child welfare information system while preparing required documents and eliminate duplicate entry of information and preparation of documents, and allow for direct determination of claims and sanctions. The department shall immediately expand the existing advisory group of consumers, social services districts and their contracted agencies and other persons with expertise in child welfare. The statewide automated child welfare information system shall be designed to permit communication with the family courts and to protect the confidentiality of individuals as prescribed by this chapter.

Section 145. Liability of judge.

Any family court judge who in good faith issues process in any proceeding under this act shall not be liable therefor unless it is shown that his action in so doing was malicious or a deliberate abuse of his discretion.

Section 812. Procedures for family offense proceedings.

Paragraph 5: Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or

a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the

following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime."

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law.

No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

Section 842. Order of protection.

An order of protection under section eight hundred forty-one of this part may set forth reasonable conditions of behavior to be observed for a period not in excess of one year by the petitioner or respondent or for a period not in excess of three years upon a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred

twenty-seven of this act. Such finding of aggravating circumstances shall be stated upon the order of protection. Such order shall specify if an order of probation is in effect. Such an order may require the petitioner or the respondent:

L.95 (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations

law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counselling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

(i) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency. The court may also upon the showing of special circumstances extend the order of protection for a reasonable period of time.

a Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where

applicable, may be entered against a former spouse and persons who have a child in common, regardless whether such persons have been married or have lived together at any time.

Section 827. Issuance of warrant; certificate of warrant.

(a) The court may issue a warrant, directing that the respondent be brought before the court, when a petition is presented to the court under section eight hundred twenty-one and it appears that

(vii) aggravating circumstances exist which require the immediate arrest of the respondent. For the purposes of this section aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household.

Section 828. Temporary order of protection; temporary order for child support.

2. A temporary order of protection is not a finding of wrongdoing.

Judiciary Law

Section 216. Additional duties of the chief administrator; certain cases.

1. The chief administrator of the courts shall designate the appropriate persons, including but not limited to district attorneys, criminal and family court clerks, corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner bringing a proceeding under article eight of the family court act or a complainant in an action which would be subject to the provisions of section 530.11 of the criminal procedure law, before such proceeding or action is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

(a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;

(b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to keep the family unit intact. Referrals for counseling, or counseling services, are available through probation for this purpose;

(c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;

4. The chief administrator of the courts shall collect data in relation to the number of cases in which the basic child support obligation, as defined in section two hundred forty of the domestic relations law and section four hundred thirteen of the family court act, was ordered; the number of cases in which the order deviated from such basic child support obligation and the reasons therefor; the incomes of the

parties; the number of children, and the amount of child support awarded pursuant to the child support standards act; and amounts of alimony or maintenance, or allocations of property included in orders or judgments that include a provision for child support pursuant to the child support standards act, and shall report such data to the legislature and the governor on or before the first day of April of each year. In collecting such data, the chief administrator shall not disclose the identities of the parties or disclose information that would tend to reveal the identities of the parties.

Section 476-a. Action for unlawful practice of the law.

1. The attorney-general may maintain an action upon his own information or upon the complaint of a private person or of a bar association organized and existing under the laws of this state against any person, partnership, corporation, or association, and any employee, agent, director, or officer thereof who commits any act or engages in any conduct prohibited by law as constituting the unlawful practice of the law.

The term "unlawful practice of the law" as used in this article shall include, but is not limited to,

(a) any act prohibited by penal law sections two hundred seventy, two hundred seventy-a, two hundred seventy-e, two hundred seventy-one, two hundred seventy-five, two hundred seventy-five-a, two hundred seventy-six, two hundred eighty or fourteen hundred fifty-two, or

(b) any other act forbidden by law to be done by any person not regularly licensed and admitted to practice law in this state, or

(c) any act punishable by the supreme court as a criminal

contempt of court under section seven hundred fifty-B of this chapter.

Section 476-b. Injunction to restrain defendant from unlawful practice of the law.

In an action brought as prescribed in section four hundred seventy-six-a, the final judgment in favor of the plaintiff shall perpetually restrain the defendant from the commission or continuance of the act complained of. A temporary restraining order to restrain the commission or continuance thereof may be granted upon proof, by affidavit, that the defendant has violated any of the provisions of such section. The provisions of statute or rule relating generally to injunctions as provisional remedies in actions apply to such a temporary restraining order and the proceedings thereupon, except that the plaintiff shall not be required to file any undertaking before the issuance of such temporary restraining order, shall not be liable for costs and shall not be liable for damages sustained by reason of the restraining order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.

Section 476-c. Investigation by the attorney-general.

1. The attorney-general is empowered to conduct an investigation of any complaint of unlawful practice of the law and in connection therewith, the attorney-general, his deputy, assistant, special assistant or other officer designated by him for such purpose is empowered to subpoena witnesses, compel their attendance, examine them under oath before him or the supreme court of the state of New York, or a justice thereof, and require the production of any books or papers which he deems relevant or material to the inquiry. Such power of subpoena and of examination shall not abate or terminate by reason of the commencement or pendency of

any action or proceeding brought by the attorney-general under section four hundred seventy-six-a.

2. No person shall be excused from attending such inquiry in pursuance to the mandates of a subpoena, or from producing a paper or book, or from being examined or required to answer a question on the ground of failure of tender or payment of a witness fee or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. Such provisions for payment of witness fee or mileage do not apply to any officer, director or person in the employ of any person, partnership, corporation, company, trust or association whose conduct or practices are being investigated.

3. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the attorney-general, his deputy or other designated officer when requested all information and assistance in their possession or within their power. Any officer participating in such inquiry who shall disclose to any person other than the attorney-general the name of any witness examined or any other information obtained upon such inquiry except as directed by the attorney-general shall be guilty of a

Section 487. Misconduct by attorneys.

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

Exhibit 5 -- Reply to State, USCA 98-9461.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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Harlow Zirkind, plaintiff -- appellant

APPEAL NO. 98-9461
- against -
USD EDNY 95-CV-931 (ERK)

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas; Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does. -- defendants - - appellees

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REPLY BRIEF TO APPELLEES E. LEO MILONAS, PHILIP C. SEGAL AND KAREN S. BURSTEIN

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Preliminary Matters

1. On Feb. 22, 1999, the appellant-plaintiff recieved a reply brief from the appellee-defendant dated Feb. 18, 1999.
2. The appellee has not requested oral arguement and in accordance with FRAP 31 and the 14th Amendment, should no longer be granted oral arguement.
3. The Attorney General has not addressed the legal claim of the appellant that hearing a contempt and imposing sanctions [upon findings of guilt] are not discretionary matters to the district court. Therefore, the appellant's claim stands, that the district court should have heard the appellant's contempt motions. Therefore, by default the US Court of Appeals should order the district court to conduct contempt of court hearings.
4. The Attorney General did not address the issue that a contempt motion must be heard prior to the decision of a motion to dismiss. In the instant case, contempt motions were filed before motions to dismiss and should have been heard prior to any motion to dismiss. Any legal arguements claimed in the motions to dismiss are automatically void upon being found guilty of contempt as would have been in the instant case had the appellant been afforded due process and contempt hearings. Therefore, by default the US Court of Appeals should order the district court to conduct contempt of court hearings.
5. Before the district court, the Attorney General never addressed any of the government reports -- state or federal -- cited by the appellant that demonstrate discrimination and denials of due process by the family courts of NYS. The Attorney General has relied solely upon the claim of absolute 11th Amendment immunity. Thus, pursuant to FRCP 8(d), the appellant's unrefuted claims and evidence as to discrimination and violations of due process by the family and divorce courts of NYS stand decided as presented by the appellant before the district court.

6. The Attorney General has not mentioned Judge Rigler in the caption. The Pro Se litigant will let the court decide if this ommission warrants a default judgement against Judge Rigler.

Point I -- Eleventh Amendment Rights are not absolute. Fourteenth Amendment violations void 11th Amendment immunity.

1. The New York State Family Court Act 145 -- in full force at the time of the inception of the instant case in family court and the district court -- expressly granted permission to sue a family court judge who has acted with malice and/or in bad faith. As state can grant more rights than the federal constitution or expand on the rights granted by the constitution, but a state can not detract from the rights granted by the federal constitution (Arizona v. Scums, 93-1660 (1995) and Michigan v. Long, 463 US 1032.
2. Furthermore, judicial immunity and other immunities are not absolute. The 14th Amendment clearly voids the 11th Amendment and other immunities. It is settled law in the United States that no one is allowed to discriminate in the legal domain and that every person is entitled to equal protection under the laws and due process. And, that all acts of discrimination occurring in a court of law are not judicial acts, but acts of "a minister of hatred", Ex Parte Virginia, 100 U.S. 339; 25 L. Ed. 676; 10 Otto 339, (1879). All arguements to this subject argued before the district court are hereby included by reference.
3. To re-enforce and reiterate the appellant's arguments before the district court, the decision of Ex Parte Virginia reads: "But if the selection of jurors could be considered in any case a judicial act, can the act charged against the petitioner be considered such when he acted outside of his authority and in direct violation of the spirit of the State statute? That statute gave him no authority, when selecting

jurors, from whom a panel might be drawn for a circuit court, to exclude all colored men merely because they were colored. Such an exclusion was not left within the limits of his discretion. It is idle, therefore, to say that the act of Congress is unconstitutional because it inflicts [*349] penalties upon State judges for their judicial action. It does no such thing.

4. The plaintiff maintains that (a) issuing an order without a trial is not a judicial act, (b) making a sum and substance divorce in family court is outside family court's jurisdiction, (c) requesting, telling, demanding in any shape manner or form, even intimating to anyone in family or any other court to perform some religious divorce ritual is TOTALLY outside the scope of the court's jurisdiction and in violation of the First and Fourteenth Amendments; and therefore not a judicial act. The appellees committed all these acts and therefore acted outside their jurisdiction and have no immunity.

5. "Upon the whole, as we are of opinion that the act of Congress upon which the indictment against the petitioner was founded is constitutional, and that he is correctly held to answer it, and as, therefore, no object would be secured by issuing a writ of habeas corpus, the petitions are "Denied."

6. Indeed, the US Supreme Court stated this in the decision of Pierson v. Ray, 386 U.S. 547; 87 S. Ct. 1213; 18 L. Ed. 2d 288, (1967), "n3 The opinion in Ex Parte Virginia, did not mention Bradley v. Fisher, 13 Wall. 335, which held that a judge could not be held liable for causing the name of an attorney to be struck from the court rolls. But in Bradley, the action was not brought under any of the Civil Rights Acts." However, in the instant case the action was brought under the Civil Rights Act.

7. In general, Pierson v. Ray, 386 U.S. 547; 87 S. Ct. 1213; 18 L. Ed. 2d 288, (1967), is a case that is not analogous to the instant case. It appears that the Attorney General is arguing that the appellant knowingly committed a crime and should therefore bear the punishment as well as to promote the

notion of absolute judicial immunity in contradiction to the Civil Rights Act of Congress and the Fourteenth Amendment. Furthermore, the Attorney General seeks to disspell the conspiracy charge based on real and documentable conspiracy because undocumented conspiracy is not grounds for a conspiracy charge.

8. Unlike the appellants in Pierson v. Ray, Ibid. whom the court held "that the ministers could not recover if it were proved that they went to Mississippi anticipating that they would be illegally [***8] arrested because such action would constitute consent to the arrest under the principle of volenti non fit injuria, he who consents to a wrong cannot be injured", the appellant in the instant case committed no crime – "a family court proceeding is not a fact of wrongdoing" – and it is no crime not to go to so-called court ordered so-called forensic evaluations. There is no case precedent for anyone in the State of New York ever being held in contempt of court for not complying which such an order or being denied a trial for not complying with such an order. The appellant averred this before the district court and the appellees never denied it, therefore pursuant to FRCP 8(d) there is no such case precedent. The appellant was informed by his attorney, Carol Zimmerman and other attorneys that he is entitled by New York State law as upheld by the Appeallate division of the Second Dept., NOT TO GO TO FORENSIC EVALUATION. Although, the court MAY -- not definitely, but MAY -- hold it against the appellant. In addition, any litigant may object to the appointment of any expert witness, especially when the charges of bribery and discrimination are raised as the appellant did in state court.

9. In addition, as the plaintiff had subpoenaed, documented evidence, that he could not have physically committed the acts described in the original family court petition by Mazal Zirkind and therefore a conviction was hopeless, which is why Judge Burstein in contradiction to the law allowed Mazal Zirkind's witness'es heresay evidence over Harlow

Zirkind's attorney's objections, prosecution was merely aggravated harrassment by lawsuit. It is common knowledge and the appellant had prior knowledge that the so-called forensics were nothing more than ad hominem attacks by bigotted court appointed personnel. In addition, the appellant had available testimony of Dr. Monty N. Weinstein who had (i) observed the children with the plaintiff; (ii) the parental alienation of the mother and (iii) the brainwashing of the law guardian maligning the plaintiff to his children; and the Child Welfare Association's letter that there was no signs of abuse (See Exhibit 11, Complaint) the plaintiff felt quite secure that he would be successful at trial without the subjective, bigotted, opinion of the court ordered so-called forensic psychologist. Obviously, the family court judges felt the same way, but their bigotry and hate, their blatant anti-Semitism, femo-nazism and hatred of men would not allow them to conduct a trial and find a mother guilty and remove her custody for parental alienation, malicious prosecution, visitation interference, and filing false abuse charges: even though this is the law in New York State but rather that the plaintiff should be made an example of, for having stood on his constitutional and other legal rights.

10. In addition, the appellants in Pierson v. Ray, did not prove conspiracy nor did they make specific allegations of conspiracy: "The record is barren of any proof or specific allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court." The petitioners merely "attempted to suggest a 'conspiracy' between Judge Spencer and the police officers by questioning him about his reasons for finding petitioners guilty in these cases and by showing that he had found other 'Freedom Riders' guilty under similar circumstances in previous cases. The proof of conspiracy never went beyond this suggestion that inferences could be drawn from Judge Spencer's judicial decisions." This is quite different from the allegations and proof submitted by the

plaintiff in the instant case such as letters and tape recordings as well as the evidence which the plaintiff maintains can be obtained upon discovery, i.e. cancelled checks – bribes – from the Agunah cult to court officials.

11. Furthermore, I pose this question to this court, if judges have absolute immunity, then why did the district court even entertain the case at all? It should have been summarily dismissed. The district court did not do that. The district court's order reads, "seek his state remedies". NYS Civil Rights laws parallel the federal civil rights laws and therefore, with these very arguments, the appellant could have sought a state remedy. Indeed, the appellant attempted to seek state intervention in the form of civil rights lawsuits, but the state courts refused to file the cases. The discrimination is so pervasive, that federal intervention is a must.

12. It is res judicata, that when charges of discrimination and corruption are made of judges, those allegations must be answered in a court of law! **LET THE JUDGES CHARGED WITH DISCRIMINATION COME FORWARD AND ANSWER THE CHARGES IN A COURT OF LAW BY TRIAL BY JURY.**

13. The case Polur v. Raffe, 912 F.2d 52; (1990) is irrelevant as a precedent. In that case, the plaintiff was afforded numerous trials while in contrast the plaintiff in the instant case was never afforded a trial and the only semblence of a trial was before Judge Burstein which commenced two (2) months after the maximum limit required by law had already expired AND EVEN THAT MOCKERY OF JUSTICE WAS DECLARED A MISTRIAL. In addition, the plaintiff in Polur v. Raffe never proved malice. He never cited any evidence. All he did was just make allegations. In contrast, the appellant in the instant case has proven malice with government reports and that the matter has to be put to a jury trial. The plaintiff Polur, relied "on vague, prolix conclusory allegations of a conspiracy without pleading any overt acts or

providing a basis in fact for his claim. It is incumbent on a plaintiff to state more than conclusory allegations to avoid dismissal of a claim predicated on a conspiracy to deprive him of his constitutional rights. See, e.g., Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) (per curiam); Sommer v. Dixon, 709 F.2d 173, 175 (2d Cir.) (per curiam), cert. denied, 464 U.S. 857, 78 L. Ed. 2d 158, 104 S. Ct. 177 (1983)." In contrast, the appellant submitted so much evidence before the district court that the defendants claimed that the complaint should be dismissed because it is not brief and did everything possible to obstruct the subpoenaing of bank records of bribery!

14. "Moreover, Polur has not demonstrated that he was denied a full and fair opportunity to litigate these issues in the prior proceedings." However, the plaintiff in the instant case has already submitted documentation proving that he was never allowed a trial nor will the court ever give him a trial.

15. As to the defendants' repeated citation of Rooker v. Fidelity Trust Co. (263 US 431); It is clear from the court's decision rendered by Justice Van Devanter, "that a full hearing was had therein and that the judgement was responsive to the issues" is a predicate for applying the Rooker doctrine. As the plaintiff was never afforded a trial, this case is totally irrelevant. Therefore, the Rooker doctrine is totally inapplicable in the case before this court because:

16. Judge Segal never held any hearings or trial of any kind neither to issue a new temporary order beyond one year nor for the final order that imposed an eleven (11) year exclusion from the home. The court should note that according to New York State law: (i) A temporary order of protection can be issued for six (6) months and renewed with a trial for an additional six (6) months; and a permanent order of protection can be issued for a maximum of one year or up to three (3) years with consent by the defendant. There simply is no law in the State of New York or legal precedent of any kind for the actions taken by Judge Segal. Simply put, Judge

Segal feels that not only is he above the law but he can make the law. Judge Segal legislated in his court and he is not allowed to do so; and to do so is to exceed his jurisdiction. Judge Segal was with absence of all jurisdiction to legislate new laws in his court room and therefore has no immunity what-so-ever. Furthermore, as his order exceeded the statutory limitation by four (4) times, it is cruel and inhuman punishment.

17. Judge William Rigler never held any hearings or trial of any kind.

18. Judge Burstein (i) did not conduct any hearings of any kind until approximately eight (8) months after issue of the initial ex-parte order of protection and exclusion from the home which expires automatically after six (6) months and can not be renewed without a full evidentiary hearing and/or trial has taken place; (ii) did not conduct a full hearing as her belated trial was mistried and she never had the opportunity to right her wrongs which had grevious and far reaching repercussions upon the plaintiff. Parenthetically, had Judge Burstein either not displayed her bigotry, or made some attempt to right her wrongs which had grievous and far reaching repercussions against the appellant, the appellant might not be taking this course of action against her.

19. In addition, the Attorney General's repeated reference to the Feldman doctrine (District Of Columbia Court Of Appeals v. Feldman, 460 U.S. 462; 103 S. Ct. 1303; 75 L. Ed. 2d 206; (1983)) is without merit: This case in subject matter is not analogous in that the issue was not a great or infamous crime that requires a jury trial but a licensing matter which is a denial of property rights and a liberty interest but not a MAJOR liberty interest as the permanent denial of child custody. Furthermore, the most important difference which makes this case totally incongruous to the instant case is that Mr. Feldman had a hearing and the evidence was considered. No such comparable counterpart exists in the instant case where the appellant was plainly and clearly denied a trial four

(4) times by New York State courts. As stated by the court: "In November 1976, Feldman applied to the Committee on Admissions of the District of Columbia Bar for admission to the District Bar under a rule which, prior to its recent amendment, allowed a member [***8] of a bar in another jurisdiction to seek membership in the District Bar without examination. In January 1977, the Committee denied Feldman's application on the ground that he had not graduated from an approved law school. Initially, the Committee stated that waivers of Rule 46I(b)(3), or exceptions to it, were not authorized. Following further contact with the Committee, however, Feldman was granted an informal hearing. After the hearing, the Committee reaffirmed its denial of Feldman's application and stated that only the District of Columbia Court of Appeals could waive the requirement of graduation from an approved law school." 20. In addition, "Hickey did not present any legal arguments nor did 'he demand admission to the examination as a matter of legal entitlement.' Ibid. He "merely asked the court to exercise its administrative discretion to permit him to take the test." Ibid. This amounted to a request that the court "make a policy decision equating his personal qualities with accredited legal education, not an adjudication requiring resort to legal principles." There was no issue of a biased trial or even an unbiased trial. Hickey was asking the court to consider his EXTENUATING circumstances and favor him with a waiver. And, the court had considered his extenuating circumstances and decided not to favor him with a waiver. There was no issue of discrimination or bias. Simply a request for favor and "the petition "invoked the administrative discretion of [the court], simply asking that to temper its rule in his favor, for personal and not legal reasons." This has no analogy to the instant case at all where the plaintiff demands by right a trial. That the plaintiff even has to assert such a request is a demonstration that the courts of New York State are communist, fascist, and McCarthyist.

21. With all due respect to the court, the question does remain, is the consideration of a licensing application and/or a waiver considered adjudication? Especially as Feldman and Hickey never demanded a license by right but by favor and not by legal claims and arguements? And, even if the refusal to grant a waiver were an adjudication, the federal statute that confers jurisdiction upon the United States District Court to entertain a constitutional challenge to the rules themselves also authorizes that court to entertain a collateral attack upon the unconstitutional application of those rules.

22. Furthermore, there is a clear distinction between appellate review and collateral attack. If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the federal-question jurisdiction of the federal court. 28 U. S. C. @ 1331 (1976 ed., Supp. V). And, if the plaintiff challenging a decision by a state court proved facts comparable to the allegations made by the plaintiff in error and appellant in Yick Wo v. Hopkins, 118 U.S. 356 (1886), they would clearly be entitled to relief in the United States district court. If they were seeking admission to any other craft regulated by the State, they would unquestionably have such a right. And, the plaintiff feels he has proven facts comparable to the allegations of Yick Wo v. Hopkins and that a jury trial would bear this out.

23. Explicit in 11th Amendment immunity as explained in Younger v. Harris, 491 US 37 (1971), is "good faith". When "good faith" is not present, as stated in Younger, the federal courts have pendent jurisdiction. "At the same time, however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances -- where [***11] irreparable injury is "both great and immediate," <=40> 401 U.S., at 46, where the state law is "'flagrantly and patently violative of express

constitutional prohibitions,'" <=41> 401 U.S., at 53, or where there is a showing of "bad faith, harassment, or ... other unusual circumstances that would call for equitable relief." <=42> 401 U.S., at 54. In the companion case of <=43> Perez v. Ledesma, 401 U.S. 82**Error! Reference source not found.**, the Court said that "only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending [*231] state prosecutions appropriate." <=44> 401 U.S., at 85. See also <=45> Dyson v. Stein, 401 U.S. 200, 203."

24. It is clear from the evidence presented to the district court and available to both Justices Burstein and Segal, that a conviction was a hopeless matter because of: (i) The subpeonaed hospital records of spinal surgery. (ii) The testimony of Rabbi Schechet who was a Rabbinical judge on a religious tribunal convened at Mazal Zirkind's request. At that proceeding, Mazal Zirkind was asked point blank, "Does your husband hit you?" Mazal Zirkind answered, "No." This proceeding was conducted in February of 1993, three (3) months before Mazal Zirkind went to family court and swore that he husband has "a history of beating her and her children". This proceeding was recorded. (iii) The testimony of Dr. Weinstein that had already been submitted to the court in affidavit form, stating that the father should have equal parenting time with his children. (iv) The attorney's affirmation of the children's pediatrician that the pediatrician had not seen nor ever heard any signs of child abuse. (v) The tampered testimony of the EMT and neighbor of the appellant, Israel Kleinman, that he had never seen any signs of child abuse. As the conviction was a hopeless matter, the family court proceedings were nothing more than aggravated harassment by lawsuit.

25. Furthermore, during the course of the proceedings in a malicious abuse of process in order to obstruct justice, Judge

Segal in concert with Mark Feldman and Mazal Zirkind, initiated a new family court case which was and is by statute, impossible to bring under federal and NYS laws. An injunction [See Injunctions filed and part of record 95-CV-931] was filed against Judge Segal therefore and the case was dismissed. This court can not be blind to the fact that each and every hearing scheduled by Judge Segal for this malicious prosecution was the day before the appellant-plaintiff was to appear in federal court and the lack of federal court intervention was always secured by Mark A. Feldman, Esq. Sometimes, upon ex parte orders secured by entering the magistrate's chambers!

26. The case, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89; 104 S. Ct. 900; 79 L. Ed. 2d 67; (1983), cited by the Attorney General with it's 5-4 decision is neither controlling nor compelling. There is no precedent for the ruling in Pennhurst, but rather the avalanche of precedents are squarely to the contrary. Furthermore, the case is not analogous as there was no charge of discrimination in Pennhurst which is a federal law and not a state law; and the case was only concerned with the enforcement of state law and no constitutional challenges to state laws were raised. But, in the instant case, federal law as well as state law has been violated. The state no more than its citizens has the right to discriminate. And, the issue that once the district court has jurisdiction over a federal question, it has jurisdiction over state matters as well, was not present in the Pennhurst case. In addition, even if the State of New York were to argue in contradiction to the plaintiff's evidence, witnesses and copies of government reports that the state does not have a bigoted policy [which the state did not argue]: Justices Karen Burstein, Philip C. Segal, and William Rigler, personally are bigots.

27. In addition, the issue of relief coming directly from the state treasury as "funding for the county mental retardation programs comes almost entirely from the State" is not true in

the instant case. The funding for the majority of the programs used against the plaintiff comes from federal funds to state agencies as rewards and reimbursements for their actions. This money is not raised by state taxation and occupies a significant ($2 Billion dollar) portion of the state's balance sheet.

28. Also, This suit is not brought directly against the state but in conjunction with private citizens, (Mazal Zirkind, Hershel Kurzrock, Mendel Epstein) and so-called officers of the court, or other private citizens claiming court appointment or quasi-judicial immunity. As such relief, by @ 1983 is not barred by the 11th Amendment as if the suit were brought directly against the state.

29. In addition, "n17 the court found that the defendants acted in good faith", which is not true in the instant case. The bigotted and greedy judges and state officials acted in bad faith. At the very least, a fact finding hearing is required to determine this issue, and that hearing must be conducted before a jury which will determine the issue as the plaintiff requested a trial by jury as a matter of right.

30. Even assuming that the federal court can not force the state to give the appellant a trial, it can force the state not to take away the appellant's children without giving the appellant a trial and furthermore, a trial is such a basic right and secured under the 14th Amendment that denial thereof is obviously unequal protection under the laws, discrimination and classification of the appellant as a sub-human which is so repugnant to the constitution that the federal court not only has jurisdiction but an obligation to force a state to conduct a trial and a fair, unbigoted trial.

31. Basicly, "This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law." And the court answered the question as to the suit being against the state by saying: "n11 'The general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public

treasury or domain, or interfere with the public administration,' or if the effect of the judgment would be 'to restrain the Government from acting, or to compel it to act." Dugan v. Rank, 372 U.S. 609, 620 (1963) (citations omitted)."

32. And, "The Court has recognized an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State. This was the holding in Ex parte Young, 209 U.S. 123 (1908), in which a federal court enjoined the Attorney General of the State of Minnesota from bringing suit to enforce a state statute that allegedly violated the Fourteenth Amendment. This Court held that the Eleventh Amendment did not prohibit issuance of this injunction. The theory of the case was that an unconstitutional enactment is "void" and therefore does not "impart to [the officer] any immunity from responsibility to the supreme authority of the United States." <=83> Id., at 160. Since the State could not authorize the action, the officer was "stripped of his official or representative character and [was] subjected in his person to the consequences of his individual conduct." Ibid.

33. The Supreme Court continues: "As discussed above, the injunction in Young was justified, notwithstanding the obvious impact on the State itself, on the view that sovereign immunity does not apply because an official who acts unconstitutionally is "stripped of his official or representative character," Young, 209 U.S., at 160. This rationale, of course, created the "well-recognized irony" that an official's unconstitutional conduct constitutes state action under the Fourteenth Amendment but not the Eleventh Amendment. Florida Dept. of State v. Treasure Salvors, Inc., 458 U.S. 670, 685 (1982) (opinion of STEVENS, J.). Nonetheless, the Young doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to "the supreme authority of the United States." Young, supra, at 160. As JUSTICE BRENNAN has

observed, "Ex parte Young was the culmination of efforts by this Court to harmonize the principles of the Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution." Perez v. Ledesma, 401 U.S. 82, 106 (1971) (concurring in part and dissenting in part). Our decisions repeatedly have emphasized that the Young doctrine rests on the need to promote the vindication of federal rights. See, e. g., Quern v. Jordan, 440 U.S., at 337; Scheuer v. Rhodes, 416 U.S. 232, 237 (1974); Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299, 304 (1952).

34. "We recognized that the prospective relief authorized by Young "has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely a shield, for those whom they were designed to protect." 415 U.S., at 664.

35. And, the court noted: "Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446 (1883) (cited only for proposition that a suit alleging unconstitutional conduct is not barred by the Eleventh Amendment, and that State cannot be sued without its consent); Poindexter v. Greenhow, 114 U.S. 270 (1885) (unconstitutional-conduct suit is not suit against State); Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894) (same). Prior to Florida Dept. of State v. Treasure Salvors, Inc., supra,"

36. And the court noted that once jurisdiction is invoked, it may deal with state issues: "This Court long has held generally that when a federal court obtains jurisdiction over a federal claim, it may adjudicate other related claims over which the court otherwise would not have jurisdiction. See, e. g., Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Osborn v. Bank of United States, 9 Wheat. 738, 819-823 (1824)."

37. "n28 The case was argued in the same way. The Eleventh Amendment argument in the briefs is confined to the federal constitutional claims. See, e. g., Brief for

Louisville & Nashville R. Co., O. T. 1916, Nos. 778, 779, pp. 15-38 (jurisdiction over federal claims); id., at 38-39 (pendent jurisdiction over state claims). Indeed the State's brief somewhat curiously closes with a concession that the federal courts had jurisdiction. Brief for State Board and Officers, O. T. 1916, Nos. 778, 779, p. 139; see Reply Brief, O. T. 1916, Nos. 778, 779, p. 2 (pointing out concession). Thus, while the State's position on the Court's jurisdiction over the federal claims is somewhat unclear, the State never argued that there might not be jurisdiction over the local-law claims if the Court found jurisdiction over the federal question in the case."

38. The only truly relevant issue of pendent-jurisdiction in the Pennhurst case is that "a federal court should decide a case on state-law grounds where possible to avoid a federal constitutional question. Nothing in our decision is meant to cast doubt on the desirability of applying the Siler principle in cases where the federal court has jurisdiction to decide the state-law issues."

39. The court concluced that "As noted above, pendent jurisdiction is a judge-made doctrine of expediency and efficiency derived from the general Art. III language conferring power to hear all "cases" arising under federal law or between diverse parties. See Mine Workers v. Gibbs, 383 U.S., at 725. See also Hagans v. Lavine, supra, at 545 (terming pendent jurisdiction "a doctrine of discretion"). At best, the appellant can only interpret the New York State's citation of Pennhurst as a plea, prayer, and more appropriately stated, a begging of the mercy of the court to aid and abet the coverup of the horrific, well-known violations of human rights in the so-called, euphemistically titled family courts and child protective services.

40. Furthermore, with all due respect to the US Supreme court's decision, I beg to differ: To afford sovereign immunity to the defendants for actions which were prohibited by state law, appears to be a remarkable misapplication of the

ancient doctrine of sovereign immunity. In a completely unprecedented holding, the Court held that Pennsylvania's sovereign immunity prevents a federal court from enjoining the conduct that Pennsylvania itself has prohibited. No rational view of the sovereign immunity of the States supports this result. Furthermore, in the instant case, New York State law, Family Court Act 145, is merely a reinfocement of federal law: anti-discrimination and 14th Amendment laws, 42 USC 5106a, and numerous rulings applying the 9th Amendment to require due process to the termination of parental rights.

41. It is utterly without support that the Eleventh Amendment and the doctrine of sovereign immunity it embodies has ever been interpreted to deprive a court of jurisdiction to grant relief against government officials who are engaged in conduct that is forbidden by their sovereign. On the contrary, the Supreme Court has repeatedly and consistently exercised the power to enjoin state officials from violating state law. Although the Court struggles mightily to distinguish some of the cases that foreclose its holding, this vain effort merely brings into stark relief the total absence of any affirmative support for its holding.

42. In Cory v. White, 457 U.S. 85 (1982), the Court thrice restated the settled rule that the Eleventh Amendment does not bar suits against state officers when they are "alleged to be acting against federal or state law."

43. By 1908, it was firmly established that conduct of state officials under color of office that is tortious as a matter of state law is not protected by the Eleventh Amendment. See Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 390-391 (1894); Poindexter v. Greenhow, 114 U.S. 270, 287 (1885); Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446, 452 (1883); Belknap v. Schild, 161 U.S. 10, 18 (1896) (same rule adopted for sovereign immunity of the United States); Stanley v. Schwalby, 147 U.S. 508, 518-519 (1893) (same); In Hopkins v. Clemson Agricultural College, 221 U.S. 636

(1911), the Court explained the relationship of these cases to the doctrine of sovereign immunity.

44. Immunity from suit is a high attribute of sovereignty -- a prerogative of the State itself -- which cannot be availed of by public agents when sued for their own torts. The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability for wrongs inflicted or injuries threatened.

45. Similarly, see in Johnson v. Lankford, 245 U.S. 541 (1918), the Court reversed the dismissal of an action against the bank commissioner of Oklahoma and his surety to recover damages for the loss of plaintiff's bank deposit, allegedly caused by the commissioner's failure to safeguard the business and assets of the bank in negligent or willful disregard of his duties under applicable state statutes. The Court explained that the action was not one against the State.

46. To hold otherwise would be to assert, that whatever an officer does, even in contravention of the laws of the State, is state action, identifies him with it and makes the redress sought against him a claim against the State and therefore prohibited by the Eleventh Amendment. Surely an officer of a State may be delinquent without involving the State in delinquency, indeed, may injure the State by delinquency as well as some resident of the State, and be amenable to both.

47. Similarly, in Rolston v. Missouri Fund Commissioners, 120 U.S. 390 (1887), the Court rejected the argument that a suit to enjoin a state officer to comply with state law violated the Eleventh Amendment. The Court wrote: "Here the suit is to get a state officer to do what a statute requires of him. The litigation is with the officer, not the state." In Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894), the Court held that the Eleventh Amendment does not bar a suit alleging that a state officer has wrongfully administered a state statute. The Court awarded injunctive relief against

state officers on the basis of both state and federal law. In Atchison, T. & S.F.R. Co. v. O'Connor, 223 U.S. 280 (1912), the Court held that a suit against state officers seeking recovery of taxes paid under duress was not against the State since a state statute required the recovery of wrongfully paid taxes. In Lankford v. Platte Iron Works Co., 235 U.S. 461 (1915), the Court assumed that the Eleventh Amendment would not bar a suit "to compel submission by the officers of the State to the laws of the State, accomplishing at once the policy of the law and its specific purpose," at 471, but rejected the appellees' construction of the state statute. See also Farish v. State Banking Board of Okla., 235 U.S. 498 (1915); American Water Softener Co. v. Lankford, 235 U.S. 496 (1915). In Martin v. Lankford, 245 U.S. 547 (1918), the Court stated that the case was not barred by the Eleventh Amendment since the claim "is based, as we have seen, upon the tortious conduct of Lankford, not in exertion of the state law but in violation of it. The reasoning of Johnson v. Lankford, 245 U.S. 541 (1918),] is therefore applicable and the conclusion must be the same, that is, the action is not one against the State, and the District Court erred in dismissing it for want of jurisdiction on that ground." at 551. While it is true, that the Martin Court went on to hold that there was no federal diversity jurisdiction over the case, it cannot be denied that the majority today repudiates the reasoning of Martin. While it is true that Johnson sought only damages, but the holding of that case, that the action was not barred by the Constitution since it alleged conduct in violation of state law, is utterly at odds with the Court's decision in Pennhurst. Surely the Court cannot mean to rely on a distinction between damages and injunctive relief, for it states: "A federal court's grant of relief against state officers on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law....We conclude that Young and Edelman are inapplicable in a suit against state officials on the basis of state law." Awarding damages for a violation

of state law by state officers acting within their authority is inconsistent with the majority's position that only a need to vindicate federal law justifies the lifting of the Eleventh Amendment bar. If an order to pay damages for wrongful conduct against a state officer is not against the State for purposes of the Eleventh Amendment, an additional order in the form of an injunction telling the officer not to do it again is no more against the State. It cannot be doubted that the Pennhurst decision overrules Johnson. Finally, as for O'Connor, while it involved an allegation of unconstitutional action, that allegation was insufficient to lift the bar of the Eleventh Amendment because the complaint sought retroactive relief. It was the fact that relief was authorized by state law that defeated the Eleventh Amendment claim in O'Connor. See 223 U.S., at 287.

48. Significantly, this rule was expressly reaffirmed in a case decided by the Supreme Court in the same Term as Ex parte Young and published in the same volume of the United States Reports. The appellants in Scully v. Bird, 209 U.S. 481 (1908), brought a diversity suit seeking injunctive relief against the dairy and food commissioner of the State of Michigan, on the ground that "under cover of his office" he had maliciously engaged in a course of conduct designed to ruin plaintiffs' business in the State. The Circuit Court dismissed the complaint on Eleventh Amendment grounds. On appeal, the plaintiffs contended that the Eleventh Amendment "does not apply where a suit is brought against defendants who, claiming to act as officers of the State, and under color of a statute which is valid and constitutional, but wrongfully administered by them, commit, or threaten to commit, acts of wrong or injury to the rights and property of the plaintiff, or make such administration of the statute an illegal burden and exaction upon the plaintiff." Ibid. This Court agreed. It noted that the complaint alleged action "in dereliction of duties enjoined by the statutes of the State," and concluded that it was "manifest from this summary of the

allegations of the bill that this is not a suit against the State." Id., at 490.

49. To further illustrate: Cases construing the sovereign immunity of the Federal Government also hold that conduct by federal officers forbidden by statute is not shielded by sovereign immunity even though the officer is not acting completely beyond his authority. See Land v. Dollar, 330 U.S. 731 (1947); Ickes v. Fox, 300 U.S. 82 (1937); Work v. Louisiana, 269 U.S. 250 (1925); Santa Fe Pacific R. Co. v. Fall, 259 U.S. 197 (1922); Payne v. Central Pacific R. Co., 255 U.S. 228 (1921); Waite v. Macy, 246 U.S. 606 (1918).

50. Finally, in Greene v. Louisville & Interurban R. Co., 244 U.S. 499 (1917), and its companion cases, Louisville & Nashville R. Co. v. Greene, 244 U.S. 522 (1917); Illinois Central R. Co. v. Greene, 244 U.S. 555 (1917), the plaintiffs challenged the conduct of state officials under both federal and state law. The Court, citing, inter alia, Young and Clemson, held that the Eleventh Amendment did not bar injunctive relief on the basis of state law, noting that the plaintiffs' federal claim was sufficiently substantial to justify the exercise of pendent jurisdiction over plaintiffs' state-law claims, and that since violations of federal and state law had been alleged, it was appropriate for the federal court to issue injunctive relief on the basis of state law without reaching the federal claims, despite the strictures of the Eleventh Amendment. In short, the Greene Court approved of precisely the methodology employed by the Court of Appeals in the Pennhurst case.

51. In addition, the rejection is unanimous of the argument that the Eleventh Amendment bars claims based on state officers' violations of federal statutes in Ray v. Atlantic Richfield Co., 435 U.S. 151, 156, n. 6 (1978)

52. In sum, a century and a half of the Supreme Court's Eleventh Amendment jurisprudence has established the following: A suit alleging that the official had acted within his authority but in a manner contrary to state statutes was

not barred because the Eleventh Amendment prohibits suits against States; it does not bar suits against state officials for actions not permitted by the State under its own law. The sovereign could not and would not authorize its officers to violate its own law; hence an action against a state officer seeking redress for conduct not permitted by state law is a suit against the officer, not the sovereign. Ex parte Young concluded in explicit a fashion as possible that unconstitutional action by state officials is not action by the State even if it purports to be authorized by state law, because the Federal Constitution strikes down the state-law shield. In the tort cases, if the plaintiff proves his case, there is by definition no state-law defense to shield the defendant. Similarly, when the state officer violates a state statute, the sovereign has by definition erected no shield against liability. These precedents make clear that there is no foundation for the contention that the Supreme Court embraced -- that Ex parte Young authorizes injunctive relief against state officials only on the basis of federal law. To the contrary, Young is as clear as a bell: the Eleventh Amendment does not apply where there is no state-law shield. That simple principle should have controlled the court's decision in Pennhurst.

53. "Whether this immunity is an absolute survival of the monarchial privilege, or is a manifestation merely of power, or rests on abstract logical grounds, it undoubtedly runs counter to modern democratic notions of the moral responsibility of the State. Accordingly, courts reflect a strong legislative momentum in their tendency to extend the legal responsibility of Government and to confirm Maitland's belief, expressed nearly fifty years ago that, 'it is a wholesome sight to see "the Crown" sued and answering for its torts.'" Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 59 (1944) (Frankfurter, J., dissenting) (citation omitted).

54. In the even older decision of Poindexter v. Greenhow, 114 U.S. 270 (1885), the Supreme Court, after observing that "the distinction between the government of a State and the

State itself is important, and should be observed," id., at 290, wrote: "This distinction is essential to the idea of constitutional government. To deny it or blot it out obliterates the line of demarcation that separates constitutional government from absolutism, free self-government based on the sovereignty of the people from that despotism, whether of the one or the many, which enables the agent of the State to declare and decree that he is the State; to say L'Etat c'est moi.' Of what avail are written constitutions whose bills of rights for the security of individual liberty have been written, too often, with the blood of martyrs shed upon the battlefield and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend, and enforce them; and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple, and naked...."Id., at 291.

55. This concept is further expounded upon in Gibbons, The Eleventh Amendment and State Sovereign Immunity: A Reinterpretation, 83 Colum. L. Rev. 1889 (1983).

56. In addition, in the following cases the Supreme Court held injunctive relief may issue against state officers on the basis of state law after explicitly rejecting their Eleventh Amendment defense: Rolston v. Missouri Fund Commissioners, 120 U.S. 390 (1887);**Error! Reference source not found.** South Carolina v. Wesley, 155 U.S. 542 (1895); Tindal v. Wesley, 167 U.S. 204 (1897); Scully v.

Bird, 209 U.S. 481 (1908);**Error! Reference source not found.** Hopkins v. Clemson Agricultural College, 221 U.S. 636 (1911); Atchison T. & S.F.R. Co. v. O'Connor, 223 U.S. 280 (1912);**Error! Reference source not found.** Johnson v. Lankford, 245 U.S. 541 (1918); Martin v. Lankford, 245 U.S. 547 (1918); Greene v. Louisville & Interurban R. Co., 244 U.S. 499 (1917); Louisville & Nashville R. Co. v. Greene, 244 U.S. 522 (1917); Illinois Central R. Co. v. Greene, 244 U.S. 555 (1917).

57. Since the petitioners' position in Pennhurst applies also to federal sovereign immunity (indeed the principal case on which they rely, Larson, is a federal sovereign immunity case), the following additional cases -- which refused to apply sovereign immunity to suits against federal officers acting within the scope of their authority because the plaintiff had alleged that the officers had engaged in unlawful conduct -- are rejected: Little v. Barreme, 2 Cranch 170 (1804); Wise v. Withers, 3 Cranch 331 (1806); Mitchell v. Harmony, 13 How. 115 (1852); Bates v. Clark, 95 U.S. 204 (1877); Belknap v. Schild, 161 U.S. 10 (1896); Sloan Shipyards Corp. v. United States Shipping Bd. Emergency Fleet Corp., 258 U.S. 549 (1922); Santa Fe Pacific R. Co. v. Fall, 259 U.S. 197 (1922); Philadelphia Co. v. Stimson, 223 U.S. 605 (1912); Land v. Dollar, 330 U.S., at 738.

58. Larson itself cites most of these cases with approval, and disapproves of none of them. But in its 1984 decision, the Supreme Court overruled them all. In fact, the Supreme Court repudiates the two-track analysis of Larson, since in Larson the Court stated that conduct which has been specifically prohibited by statute is not protected by sovereign immunity even if it is performed within the scope of the official's duties, yet in the 1984 decision of Pennhurst the Court held that even if an officer violates a statute, his conduct is protected by sovereign immunity.

59. With it's 1984 decision in Pennhurst , the Supreme Court overruled the following cases: Siler v. Louisville &

Nashville R. Co., 213 U.S. 175 (1909), and its progeny, including Louisville & Nashville R. Co. v. Garrett, 231 U.S. 298 (1913); Davis v. Wallace, 257 U.S. 478 (1922); Chicago Great Western R. Co. v. Kendall, 266 U.S. 94 (1924); United Fuel Gas Co. v. Railroad Comm'n of Ky., 278 U.S. 300 (1929); Glenn v. Field Packing Co., 290 U.S. 177 (1933); Lee v. Bickell, 292 U.S. 415 (1934); Railroad Comm'n of California v. Pacific Gas & Electric Co., 302 U.S. 388 (1938). This is because until Pennhurst the law was thought to be well settled on this point. With all due respect to the court, I can not see how the Pennhurst case is either controlling or compelling.

60. From the 15th-century English common law to Larson and beyond, courts have never held that prohibited conduct can be shielded by sovereign immunity. That rule makes good sense -- since a principal cannot authorize unlawful conduct, such conduct is of necessity ultra vires. There is no reason to abandon such a well-settled and sensible rule.

61. The court should also note that the Attorney General has never refuted the claims of discrimination substantiated by federal and state reports presented by the appellant before the district court. In addition, the Attorney General has never refuted the claims of bad faith by the State officials and agencies complained of. Therefore, pursuant to the FRCP 8(d) the State **DOES** have discriminatory policies, including discriminatory court procedures, in place, which the appellant was subjected and; such discriminatory polices and court procedures violate the 14th Amendment and therefore void any 11th Amendment immunity.

A. Family Court exceeded its jurisdiction by making a sum and substance divorce.

1. As argued in the Complaint [Section: Other Considerations], Family Court exceeded it's jurisdiction by

making a sum and substance divorce.

2. Furthermore, the family court judges denied the requisite trial guaranteed to the appellant pursuant to the NYS Constitution, Article I, Bill of Rights, Section 2: "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law."

3. And NYS Constitution, Article I, Bill of Rights, Section 9, "nor shall any divorce be granted otherwise than by due judicial proceedings; ... and the legislature shall pass appropiate laws to prevent offenses against any of the provisions of this section."

4. And NYS Constitution, Article VI, Bill of Rights, Section 13. "b. "The family court shall have jurisdiction over..." (2) **the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage**; (4) **the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage**; (7) "crimes and offenses by or against minors or between spouses"

5. The court should note, that on record, and the transcripts were submitted as evidence before the district court, at the very first hearing before former Judge Karen Burstein, Judge Karen Burstein asked Mazal Zirkind if Mazal Zirkind is getting divorced from her husband. Mazal Zirkind responded, "Yes". Thus, Karen Burstein knowingly exceeded her jurisdiction.

6. And NYS Constitution, Article VI, Bill of Rights, Section 18. "a. Trial by jury is guaranteed as provided in article one of this constitution. The legislature may provide that in any court of original jurisdiction a jury shall be composed of six or of twelve persons and may authorize any court which shall jurisdiction over crimes and other violations of law, other

than crimes prosecuted by indictment, to try such matters without a jury, provided, however, that crimes prosecuted by indictment shall be tried by a jury composed of twelve persons, unless a jury trial has been waived as provided in section two of article one of this constitution."

7. As argued before the district court and not denied by the Attorney General, for all intents and purposes, the family makes a sum and substance divorce, by deciding custody, deciding child support and forcing couples to separate. This excess of jurisdiction was averred and not denied. Thus, the judges and officers of the family court exceeded their jurisdiction and do not have any 11th Amendment immunity.

8. When a judge exceeds his/her jurisdiction, s/he is no longer acting as a judge and is NOT protected by the 11th Amendment. [Ex. Parte Virginia]

B. Proof of State Policies of discrimination in domestic relations.

(i) Child Custody Awards

1. The actions of the New York State family courts are inherently sexist and discriminatory against fathers. This can be evidenced by careful statistical analysis of certain New York State reports (See, Exhibit 2, Reply to State, Report of the Chief Administrator of the Courts, Pursuant to Judiciary Law Section 216(5)) that are produced in accordance with federal statute in comparison (See Exhibit 4, Reply to State) with statistics produced by the US Census Bureau (See Exhibit 3, Reply to State, US Census Bureau (Current Population Reports, Population Characteristics, Series P-20, No. 461)) and the national Centers for Disease Control (See, Exhibit 3, Reply to State, US Dept of Health and Human Services, Centers for Disease Control and Prevention, Monthly Vital Statistics Report, Vol. 43, No. 9, Supplement, March 22, 1995, tables 18, 19 and 20).

2. The New York State Compendium of Child Support which is produced on a yearly basis, shows that New York State is consistently awarding 3.6% of child support awards to fathers.

3. Conversely, consistently, every year 96.4% of ALL child support awards are to women, which also means that 96.4% of ALL custody awards are to mothers .... For all intents and purposes, the State of New York awards mother custody 100% of the time. Three point six percent (3.6%) is so insignificant as to not be considered.

4. In addition, this is a full two-thirds (2/3) below the national statistic as reported by the US Census Bureau and the national Centers for Disease Control (US Dept of Health and Human Services, Centers for Disease Control and Prevention, Monthly Vital Statistics Report, Vol. 43, No. 9, Supplement, March 22, 1995, tables 18, 19 and 20).

5. In addition, according to the national Centers for Disease Control, the national average for maternal custody awards is a rate of seventy-two (72%). Yet, New York State is awarding maternal custody approximately ninety percent (90%) of the time; which is twenty percent (20%) more than the national average.

6. Furthermore, if -- as New York State law provides -- there is no prima facie to right custody, then ninty-six point four percent (96.4%) maternal custody can not be considered by any stretch of the imagination as 'no prima facie right to custody'.

7. "MISSING, ABDUCTED, RUN AWAY AND THROWN AWAY CHILDREN IN AMERICA", US Dept. of Justice has noted that approximately eighty-one percent (81%) of all children are abducted by parents because their CUSTODY AND VISITATION IS THWARTED by the other parent AND THEIR IS NO REDRESS IN THE COURTS AT ALL! There is no reason to assume that NYS is not included therein.

(ii) Child Support Awards

1. The New York State, Child Support Standards Act, Evaluation Project 1993 displays prejudice, discrimination, denials of due process, unequal protections under the laws and other improprieties among the support court and the Dept. of Social Services:
2. That mothers had sole custody in 96% of the family court cases [and is beyond the national average as cited above].
3. That two-thirds (2/3) of the custodial parents (women) did not provide proof of income while only half (1/2) of the non-custodial parents (men) did not provide proof of income. [The appellant endured such violations of due process.]
4. **That child support awards are excessive beyond the legal guidelines; putting non-custodial parents (fathers) into poverty; that the lower the income, the greater the deviations from the guidelines and that there is no justification for the deviations from the guidelines**. [The appellant suffered such violations of due process.]
5. That the deviations as stated in the report were actually greater, but such cases were excluded from the report as "unique" cases that would have improperly skewed the report.
6. Eighteen percent (18%) of all court records -- transcription tapes -- are missing.
7. Current Population Reports, US Bureau of the Census, Series P-23, No 173, 1989: Seventy-five percent (75%) of ALL support is paid. And; US General Accounting Office Report, GAO/HRD-92-39FS, January 1992: Sixty-six percent (66%) of ALL support not paid by non-custodial fathers is due to the INABILITY TO PAY.
8. THEN WHY ARE SO MANY MEN IN THE BRONX HOUSE OF DETENTION FOR NON-PAYMENT OF CHILD SUPPORT AND THE ONLY WOMAN TO-DATE ARRESTED FOR NON-PAYMENT OF CHILD SUPPORT IN NEW YORK CITY AND POSSIBLY NEW YORK

(iii) Statutory Violations of Separation of Church and State

1. The New York State GET Laws demonstrate beyond a shadow of a doubt that there is an animus on the part of the State of New York and its divorce and family courts towards Orthodox Jews. The State has enacted a law with the intention of forcing Orthodox and Hassidic Jews to perform a religious divorce ritual [See New York's Get Laws, Columbia Journal of Law, citation of Governor's Memoramdum]. The GET Laws apply to no other religious group or class of individuals and in practicality, have not been applied to any other group of inidividuals.
2. In addition, those judges that use the NYS GET Laws are clearly violating Separation of Church and State as well as using their courtrooms into private inquisitions to force Orthodox and Hassidic men to perform Jewish divorce rituals.

B. Proof of Bad Faith on the Part of the State of NY, especially in NYC family courts.

1. Brooklyn Family Court has a one hundred percent (100%) conviction rate [See Exhibit 16, Complaint, Report of Chief Administrator of the Courts, For the Calendar Year January 1, 1992 -- December 31, 1992, pgs 157-160]. This was never denied by the Attorney General in response papers [See Reply to State, Paragraph 10, **ACTS OF BAD FAITH, CORRUPTION AND IMPROPRIETY**, item VIII]. How can such a court be anything but kangaroo?
2. Marjory Fields is director of the National Center on Woman and Family Law, Inc. (See Exhibit 26, Reply to State) whose mission statement is to provide legal family law services to women (See Exhibit 26, Reply to State) as well as Marjory Fields' financial interest in Legal Services for New

York City (See Exhibit 26, Reply to State) is sufficient conflict of interest for Marjory Fields not to concurrently practice law and preside as a judge. As a judge, she should have no part in any legal firm or organization providing litigation, especially litigation that is prone to appear before her.

3. In addition, the National Center on Woman and Family Law have a vested interest in Legal Services Corp (See Exhibit 26, Reply to State) which is another feminist litigation machine whose goals do not appear to be honorable. The bulk of the work i.e. legal representation by these corporations is in the domain of domestic violence and family law with a significant amount of work within New York City. As Judge Fields only has jurisdiction over family law matters, it is total impropriety for Judge Fields to try any case and this is grounds for impeachment. Furthermore, the Ethics Committee is fully aware of this matter (exhibit 26) but has never taken any action of any kind. Is this not bad faith on the part of New York State?

4. Marjory Fields is an officer of the coporation Sanctuary for Families (See Exhibit 27, Reply to State) that provides foster care facilities, shelters for battered women, and received federal and state funding therefore. It is impropriety for Marjory Fields to sit on the bench and make decisions that will send innocent children to facilities from which Marjory Fields directly profits. Again, the Ethics Committee is fully aware of this heinious conflict of interest yet; has done nothing about it.

5. Justice Marjorie Fields, chief justice of Bronx family court, is described in detail in the American Bench. This detailed description is an act of her own volition. This description of Justice Fields describes none other than a rabid, radical, subversive feminist. Page after page, describes Justice Fields', radical feminist and anti-man, propaganda, writings, lectures and actions. In the first ten years of her reign as the one and only judge in Bronx family court, she

convicted ten thousand (10,000) men and based upon information and belief never found a man innocent. One must also put the ten thousand (10,000) convictions into perspective. Assuming these convictions were the only cases she tried: ten thousand (10,000) convictions over a period of ten (10) years equal one thousand (1,000) convictions per year. There are two hundred-fifty court days per year. One thousand (1,000) convictions divided by two hundred fifty (250) court days equals four (4) convictions per day. There are seven (7) hours per court day. Divide seven (7) hours by four (4) convictions per day and the result is one and three quarters (1 3/4) hours per trial of child abuse and termination of parental rights resulting in a conviction. This is an outrage and clearly demonstrates that the NYS family courts do not provide trials, especially to men.

6. Justice Fields can not be construed as anything but a sexist bigot. In plain English, she is a femo-nazi. How does such an obviously discriminatory judge as she, still occupy the bench in family court in spite of her blatant and outspoken discrimination and abuse of process? How can New York State claim that the Bad Faith Exception does not apply to New York State?

Point II -- The Domestic Relations Exception is not absolute.

1. Many new laws and treaties have changed the domestic relations exception in federal court: The Hague Convention; the Civil Rights Act of 1871; the Parental Kidnapping Prevention Act; The Uniform Reciprocal Enforcement of Support Act, 42 USC 652; The Child Abuse and Prevention Treatment Act; The Child Abuse and Neglect Accountability Act; The Uniform Child Custody Jurisdiction Act, etc.

2. The often cited precedent for federal court domestic relations exception is RE: Burrus. In RE: Burrus the court's only precedent was Barry v. Mercein. In Barry v. Mercein, the court stated: "Mr. Barry then made application to the

Circuit Court of the United States for the Southern District of New York, where his case was heard by Judge Betts, who delivered a very careful and a very able opinion, which has been furnished to us, in which he held that his court could not exercise the common law function of parens patriae, and therefore had no jurisdiction over the matter, nor had it jurisdiction by virtue of any statute of the United States." Recent court decisions have reversed this theory, especially the Ankerbrandt decision which allows for federal intervention when the state infrastructure is incapable of handling the situation. The most notable and intrusive interference of the federal courts into domestic relations is in the area of child support.

3. The court must note that RE: Burrus was decided in 1890 and although the Civil Rights Act and the 14th Amendment were in effect at the time, and the issue was discussed by the court, the matter was not before the court. In the instant case, the matter of civil rights violations is before the court.

4. The essential matter before the court in RE: Burrus was an error of writ of habeas corpus which was issued **not pursuant to court ordered custody**. The instant case is a matter of malicious prosecution and denial of due process. Furthermore, in the instant case as the loss of parental custody **is pursuant to a court order**, a writ of habeas corpus would be permissable.

5. RE: Burrus was decided prior to the Hague Convention. The Hague convention is an international treaty which the U.S. is a signatory thereto. An international treaty takes legal precedence even over the U.S. Constitution. The Hague Convenction would have severely impacted the decision of Barry v. Mercein to the point of nullification and; **Barry v. Mercein was the only case precedent in RE: Burrus for standing that the district courts can not handle a child custody matter.**

6. In RE: Burrus there were no allegations of discrimination as in the instant case.

7. In RE: Burrus there were no allegations of religious persecution and/or violation of separation of Church and State; as in the instant case.
8. The grandfather-defendant in RE: Burrus had custody of the child due to happenstance. In the instant case, the mother-**WIFE**-defendant has custody pursuant to a court order which was issued without due process.
9. RE: Burrus was decided prior to the enactment of 28 USC 1376(a), 104 Stat. 5113, P.L. 101-650. In the instant case, 28 USC 1376(a) permits the district court to intervene into state matters -- including child custody -- because of the presence of the federal questions: most notably denial of due process, discrimination and religious persecution. Furthermore, eventhough 28 USC 1376(a) was not in force at the time of RE: Burrus, if there had been federal questions raised in RE: Burrus as the instant plaintiff has raised federal questions, the court in RE: Burrus would have had jurisdiction, pursuant to the Civil Rights Act of 1871.
10. In RE: Burrus the child was taken over interstate lines in derogation of a court order. The Parental Kidnapping Prevention Act was not in effect when RE: Burrus was decided; today the Parental Kidnapping Prevention Act is law. This would have made Thomas Burrus' act of taking his grandson, a criminal act into which the F.B.I. would have been called to resolve.
11. In addition, today New York State laws provide **that a writ of habeas corpus may be brought for denials of parent-child visitation/custody.** Indeed, in the instant case the plaintiff exhausted all his available state remedies to bring a writ of habeas corpus on the instant matter. The plaintiff's attorney lawfully brought a writ of habeas corpus in New York Supreme Court before Judge Rigler who refused to hear the petition in derogation of the law and the Appeallate Division refused to exercise its discretion to hear the appeal of the unconstitutional denial of a hearing. Judge Rigler could have been sued under article 78 at the time.

However, at the time the plaintiff was before Judge Sprizzo in the Southern district for this and other matters. An article 78 petition at the time would have been redundant. Consequently, the statute of limitations for an article 78 have since passed. As the state courts refused to comply with state law due to discrimination; the federal court has jurisdiction over all matters pursuant to 28 USC 1367(a).

12. The specific act of Congress, The Child Abuse and Neglect Accountability Act of 1993, which was non-existant in the time of RE: Burrus. This Congressional act permits the instant case. And, as the state courts refuse to comply with their obligation to pursue and prosecute the matter, pursuant to 28 USC 1376(a) the federal court has full jurisdiction to deal with all pertinent matters including child custody matters.

13. There are many new laws enacted by Congress which clearly indicate that child custody matters are within the perview of federal courts: (a) The Uniform Reciprocal Enforcement of Support Act, (b) 42 USC 652, (c) The Child Abuse and Prevention Treatment Act, (d) The Parental Kidnapping Prevention Act, (e) The Child Abuse and Neglect Accountability Act, (f) The Uniform Child Custody Jurisdiction Act and (g) the international treaty: The Hague Convention.

14. While in RE: Burrus the courts were not acting under color of authority of laws of the United States. However, in the instant case the courts are acting under the color of the laws of including but not limited to the specific act of Congress the Child Abuse and Prevention Treatment Act..

15. It is clear that there was only one matter before the court in RE: Burrus: The issue of habeas corpus: "the foundation of his claim of right to be so relieved is, that neither the District Court of Nebraska nor Judge Dundy, the judge of that court, had any jurisdiction whatever in the original case of habeas corpus before him. That is the only question in the present case". As to the matter of habeas corpus, the Court in

RE: Burrus decided: "It is sufficient to say that the net result of the discussion is, that all the courts of the United States, and the justices and judges of all its courts, are authorized to issue the writ of habeas corpus in any case where a party is imprisoned or held in custody for an act done by or under the authority of the laws of the United States, or where his imprisonment is in violation of the Constitution of the United States, or where it is supposed to be in violation of the law of nations or of the United States, in all which cases the federal courts and judges have jurisdiction to make inquiry into the matter, and, in the language of the statute, when the prisoner is brought before them and the matter is inquired into, the court or justice or judge shall "dispose of the party as law and justice require." It is not now the law, therefore, and never was, that every person held in unlawful imprisonment has a right to invoke the aid of the courts of the United States for his release by the writ of habeas corpus. In order to obtain the benefit of this writ and to procure its being issued by the court or justice or judge who has a right to order its issue, it should be made to appear, upon the application for the writ, that it is founded upon some matter which justifies the exercise of federal authority, and which is necessary to the enforcement of rights under the Constitution, laws or treaties of the United States." There was no federal question raised in RE: Burrus. In the instant case the federal question of discrimination is raised and the state court action taken against the instant plaintiff was taken in accordance with the act of Congress, the Child Abuse and Prevention Treatment Act. Therefore, the district court would have the jurisdiction and standing to handle a writ of habeas corpus brought by the instant plaintiff if the instant plaintiff were to do such a thing.
16. In addition, in RE: Burrus parental custody was terminated by happenstance and not court order, unlike the instant case where parental custody was terminated by court order: "In the case before us there was no pretence that the child was restrained of its liberty, or that the grandfather

withheld it from the possession and control of the father, under or by virtue of any authority of the United States, or that his possession of the child was in violation of the Constitution or any law or treaty of the United States." And the court continued, "The whole subject of the [*594] domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." Today, this is no longer true. All the acts of Congress, especially the Child Abuse and Prevention Treatment Act and the Child Abuse and Neglect Responsibility Act; clearly demonstrate that domestic relations are no longer the sole domain of the states. Furthermore, the court stated, "As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress, or any treaty of the United States or its Constitution." The Parental Kidnapping Prevention Act clearly negates this last statement by the court in RE: Burrus. 17. In sum, the decision in RE: Burrus is: "My opinion upon this review of this subject is, that there is no foundation for the claim that there is vested in the United States government a common law prerogative, or that the Circuit Court can, upon the footing of common law prerogative, by writ of habeas corpus, assume and exercise this function of parens patriae in relation to infant children held **in detention by private individuals, not acting under color of authority from the laws of the United States**." HOWEVER, in the instant case, the plaintiff has been aggreived by laws enacted pursuant to and in compliance with the Child Abuse and Prevention Treatment Act which the state of New York complies with in order to receive billions of dollars in federal Title IV-D funding. THEREFORE, THE INSTANT CASE IS NOT A CONTROVERSY BETWEEN PRIVATE

PARTIES BECAUSE THE STATE IS THE ENFORCER.

A. Federal courts have jurisdiction over child support matters.

1. In the cases of Ankerbarndt; Kimberly Moody vs. New York State, May 1994; and Barbara Tulley of Nevada [citation unavailable to the Pro Se litigant within these time constraints], all the litigants were women and the federal courts did intervene in domestic relation matters.
2. These cases involved child support and Barbara Tully of Nevada included corruption in the forms of denials of due process. Child support and child support across state lines, is an issue in the instant case.
3. The bigotted, rascist, sexist and anti-Semitic NYS officials hope and pray that that the federal courts will also be discriminatory by allowing only women relief in federal courts for matters that pertain to custody/visitation and child support; and not men.

B. Federal courts have jurisdiction over due process violations in domestic relations.

1. Hernstand v. Hernstadt, 373 F. 2d 316 (1967), involved a divorce in which the husband, the father attempted to have custody and visitation restructured in federal court as well as seek monetary damages for denial of visitation.
2. Although the plaintiff (in Hernstadt Ibid.) asserted bad faith "by raising a constitutional claim of full faith and credit to the Connecticut decree" and the court denied the assertion as frivolous, "where the constitutional claim is frivolous, as here," and consequently "the suit should be dismissed". From Hernstadt, it is clear that if valid constitutional claims concerning due process in domestic relations are raised, then the federal court does have jurisdiction.
3. In the instanct case **proof in the form of governement**

statistics have been submitted (see Reply to State, Exhibits 2, 3, 4, 5 & 6) and; **DOCUMENTED** claims of discrimination and racism were put forward.

4. In addition, unlike Hernstadt, in the instant case, state laws are being constitutionally challenged. These same challenges have been raised by other citizens [Becher vs. Becher, NYS, the Pro Se litigant has insufficient time to procure a proper citation] in state court, but the courts have not addressed the constitutional claim and rule on other grounds.

5. In addition, the claim of violation of separation of Church and State was not made in Hernstadt. Nor, was a violation of separation of Church and State demonstrated by examples of legislation instituted specifically against one religious group and applicable to only that one religious group. The NYS GET laws are clearly unconstitutional violations of separation of Church and State. [See New York's GET Laws: A Constitutional Analysis, Columbia Journal of Law and Social Problems, Fall 1993, Volume 27, Number 1. This article was incorporated into the plaedings before the district court and is hereby incorporated by reference.]

6. In addition, the plaintiff in Hernstadt was afforded the opportunity to prove bad faith: something the district court did not do in the instant case and the State of New York would not dare allow this plaintiff.

7. The appellant most definitely agrees with the court's decision in Hernstadt (Ibid.) that "it appears to be settled law that custody and visitation rights are incapable of being reduced to any pecuniary standard of value." What price would a parent put on his child? However, in the instant case, the denial of due process cost the plaintiff approximately $40,000-, in addition there was a loss of property, and finally that the denial of due process caused an extortionery extraction of on-going child support paid in cash, under duress, amounting to a minimum of $5,000- with further demands and debts therefore.

8. In addition, although there may be no pecuniary standard to use for damages; punitive damages for kidnapping under the color of state law are surely in order; and it is quite common for kidnappers to ask for sums of five (5) million dollars for one individual. Such a penalty, for such a crime, is highly appropriate and will deter future similar acts on the part of the State or any other kidnappers under the color of state law.

9. It is irrelevant if the kidnapper uses candy, picks up an unweary teenage hitckhiker or files false abuse charges and has bigotted psychologists file false reports with the courts: kidnapping it is and kidnapping is a crime. In the United States of America, kidnapping used to be a capital crime, today it is sanctioned and promoted by the State of New York with the kidnappers wearing black robes.

10. And, in Caban v. Mohammed 441 US 380, we find when a federal question of discrimination is raised, especially in regards to due process, the federal courts have jurisdiction. As Caban establishes that the very essence of the laws complained of in Merrick v. Merrick are innately discriminatory. Therefore, the US Supreme court decided that it is unconstitutional to make a distinction between an unwed mother and father where a difference "substatially related to an unimportant state interest".

Point III -- Other Matters

A. Misrepresentations by the Attorney General of Appellant's claims before the US Court of Appeals.

1. In addition, the Attorney General distorted and added words to the appellant's claims. The appellant has not claimed to be in possession of a court order with a forged signature of the Honorable Judge Korman. The appellant has claimed to be in possession of a document. This is yet another example of the Attorney General not being able to

win upon the facts and therefore distorting the facts to maliciously portray the Pro Se litigant as "crazy".

B. Misrepresentations by the Attorney General of proceedings before the district court.

1. As to the assertion that there was a basic lack of facts in the contempt motions presented by the appellant in the district court, this is sophistry. Although it is true that in the initial contempt motion, the name of the forger was not mentioned, in order to lay the foundation, in almost nine (9) interim appeals and numerous letters to the court and investigative agencies, the Pro Se Clerk M. Cecilia Volk was mentioned. Indeed, the testimony and the ability to confront the accused, M. Cecilia Volk was requested at the contempt hearing that was never held. And, even if the identity of the forger is never found, it is sufficient that a forgery occurred to obstruct justice in favor of the appellees-defendants to dismiss the appellees-defendants motions to dismiss pursuant to FRCP 11.

2. Furthermore, the Attorney General has claimed that the appellant was afforded every opportunity to submit the appellant's evidence in court. This is buffoonery and an outright lie. None of the appellant's witnesses were called. Rabbi Israel Kleinman, the witness subpoenaed in NYS that Mark A. Feldman tampered with was never called to the witness stand. None of the court officials, especially Aliza Silber and M. Cecilia Volk were ever called to the witness stand as other witnesses were not. In regards to the forged document, when was Judge Korman ever confronted with this document? And, the Attorney General has totally disregarded the appellant's obvious legal claim and the Magistrate's statement that the appellant does not have to produce his evidence -- the document in question -- until a hearing before the Honorable Judge Korman whose signature was forged and most probably remembers all the

collaborating incidents surrounding this forgery and will then fully understand the fraud and misrepresentation that Judge Korman was subjected to. The appellant did not "refuse" to submit evidence to the district court as the Attorney General has misrepresented to this court. Indeed, in the case of the appellee, Mark A. Feldman, the appellant submitted a copy of the subpeona that Mark A. Feldman denied was ever issued.

3. From these actions, clearly the case of Polar v. Ruffe, does not apply. Polar had hearings and trials and an opportunity to present evidence as well as have witnesses testify. The appellant had none of these either in state or federal court.

4. As to the contempt motion against Judge Philip C. Segal, again, because the facts are obvious and in the perjury was written by none other the Attorney General's office, the Attorney General engages in sophistry and distortion of facts and claims to win his arguement. The contempt motion against Philip C. Segal is not based solely upon or even remotely upon the Judge Segal's lie that he harbors no animus to orthodox Jews. Although Judge Segal's abuse of process for his hatred of orthodox Judaism can be proven in open court, by the testimony of the witnesses requested in writing by the appellant in the district court; the crux of the contempt motion -- and this was never refuted by the Attorney General's office -- is that Judge Segal made two (2) irreconcilable statements to the court. In fact, one of those statements alone is in contradiction to fact and clearly perjury: The appellant made the charge that Judge Segal refused to give the appellant a trial. This is a fact which is res judicata by the NYS Appellate Division decision [copy submitted as evidence to the district court]. In the Attorney General's reply papers in the district court, the Attorney General stated clearly that Judge Segal gave the appellant a trial. This is an outright lie and perjury. Furthermore, to cover himself, only a few pages later, the Attorney General then wrote [in the reply papers to the district court] that Judge

Segal made *careful deliberations based upon motion papers.* It is impossible for Judge Segal to have decided upon motion papers and a trial. A decision is either based upon one or the other. If Judge Segal decided the case upon motion papers, then he did not give a trial. If Judge Segal gave a trial, then he did not make a decision based upon motion papers. This is very simple and the appellant fails to understand why the Attorney General continues to openly abuse the process with ridiculous claims contrary to fact and written documents which forces the appellant to treat the judges of this court like five [5] year old children and reiterate again and again, simple facts and arguements. The Attorney General should be severely admonished in this court as well as the district court for the Attorney General's vicious and brutal abuse of process, especially in a matter of human rights.

5. As to the facts of Judge Segal violating due process, all the transcripts of the hearings are before the district court, submitted as evidence by the appellant and the appellee Naftali Berrill. No where in those transcripts did Judge Segal read the appellant his rights as Judge Segal so carefully does since the inception of the appellant's case. This is a fact that the Attorney General has chosen to misrepresent to this court.

6. Allegations made on documents before the court are hardly conclusory as the Attorney General claims. And, as the appellant demonstrated in the case of Mark A. Feldman, by producing a document [subpeona] to substantiate the appellant's claims, the appellant has demonatrated his credibility before the court. [The court should note, Mark A. Feldman also attempted to make the claim that the tampered witness was unnamed and therefore non-existant.]

7. The Attorney General has asserted that the appellant has requested that the federal court "relitigate" state court claims. However, 'Relitigation' means to litigate again. Litigation means that there was a full trial which by defnition means a full opportunity to be heard and a decision was made. If there was litigation in state court under the conditions of a

full and fair opportunity to contest in that proceeding, then to litigate again -- relitigate -- is prohibitied. This has no application to the instant case. (a) Before Judges Segal and Rigler, there was no opportunity to be heard at all. (b) Before Judge Burstein there was no opportunity to be heard for eight (8) months in derogation of the law that requires that a trial be held within a maximum of six (6) months. According to the decision by the NYS Appellate Division, there was no trial given by Judge Segal. Therefore as there was no trial in state court, the issue of relitigation and retrial is irrelevant: It is impossible to relitigate that which was never litigated and the very fact that the matter was never allowed to be litigated is the greastest proof of bad faith and that the Younger Abstention doesn't apply. "The doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue which is identical to one necessarily decided in a prior action and which the parties were afforded a full and fair opportunity to contest in that prior proceeding. Halyalkar v. Board of Regents, 72 N.Y.2d 261, 266, 527 N.E.2d 1222, 1224, 532 N.Y.S.2d 85, 87 (1988); see In re The Am. Tobacco Co., 880 F.2d 1520, 1527 (2d Cir. 1989)."

8. Furthermore, even if (and the plaintiff admantly maintains that there was no trial but should) the jury find that there was a trial, that does not mean that there was no bad faith involved in the proceedings which must also be determined at trial.

C. Misrepresentations by the Attorney General of proceedings before the state court.

1. The state court case was not initiated by the appellant's "estranged" wife. Although the appellant is now estraged from his wife as well as became estranged from his wife at the time of the inception of the federal court case and; the state courts refuse to allow the appellant to divorce his wife -- no doubt due to intervention by the Agunah cult -- at the time

the state court case was initiated, the appellant was living with his wife.

D. Other Issues

1. The appellant never asked the federal court to exclusively address the issue of custody. The appellant did ask for alternate relief in the custody matter e.g. as to ensuring a fair state hearing which could have been awarded by appointing a master to ensure fair hearings in state. However, the appellant can argue -- as the appellant did in the district court -- that since numerous acts of discrimination occurred as well as clearly discriminatory laws and policies were being applied to the appellant -- the NYS GET law enacted to force religious Jews to commit a religious ritual being the most prominent demonstration of unconstitutional actions and animus by the State of New York against orthodox Jews -- therefore, the federal court has jurisdiction over the state matter, even pendant jurisdiction and once the federal court has jurisdiction over one matter, it has jurisdiction over all matters: which will include custody and divorce as well as child support which has already been recognized by the federal courts and adjudicated in Ankerbrandt cited by the Attorney General.
2. Furthermore, the appellant never asked the federal court to reexamine the facts submitted to the state court, because the appellant was never allowed to present evidence to the state court!
3. What the appellant has asked is that the federal court examine unconstitutional laws, unconstitutionally applied laws, federal and state reports justifying these claims, Govenor's memorandums justifying these claims and other pertinent evidence to state policies of discrimination particularly by abuse of process, especially in order to defraud the US Treasury.
4. These are hardly frivolous claim as the Attorney General

asserts.

5. Furthermore, the appellant is a well lettered computer professional who has been retained as an expert witness in data and computer analysis for litigation support in the past. The data analysis presented by the appellant are statements made by an expert witness and not a layman in data analysis and acquisition such as the Attorney General who is merely a legal expert. Since the Attorney General has never refuted any of the claims made based upon federal and state reports as well as the analysis thereof by the appellant, the charges of discrimination against the state stand by default.

6. The appellant-plaintiff has demanded in the appeal for full and proper enforcement of the magistrate's order for full financial disclosure of the Agunah cult's church -- Agunah Inc., including the canceled checks from all the Agunah cult's checking accounts. And, that the information from those subpeonaed records be heard properly in accordance with due process. Upon subpeonaing these records -- if the appellees, defendants and their co-conspirators as well as other Agunah cultists -- have not destroyed these records; it can be proven that the unconstitutional actions taken by appellees were based upon bribery by the Agunah cult.

7. Furthermore, it can be proven that the appellees committed tax fraud as well as defrauded Congress and the Treasury.

8. In addition, the appellant-plaintiff has stated clearly that the FRCP 11 was not properly and equally applied to the appellees-defendants and; that on appeal there must be hearings de novo for the striking of motions dismissed based upon fraud and misrepresentation. Surely, a motion submitted with inadmissable evidence obtained illegally is misrepresentation and must be striken. Furthermore, an individual sworn to uphold the federal constitution and abide by the laws of the federal constitution, which demands upholding the 14th Amendment, Due Process Clause and the state laws; has committed treason. How can the court accept

a motion submitted by a traitor?

9. In addition, due to the conspiracy charge; since the appellees-defendants and their agents conspired to and did forge the Honorable Judge Edward R. Korman's signature then; if one of the conspirators is guilty, all the conspirators must be considered as having forged the Honorable Judge Korman's signature and the full extent of the law must be brought down to bear upon these conspirators. Specifically, but not limited to the FRCP 11, which was brutally not applied to the appellees-defendants in a gross miscarriage of justice.

10. It is immensely clear that a gross miscarriage of justice has occurred. And, it appears as if there has been bias and favoritism towards unethical lawyers who have abused the process to accept and launder drug-funded bribes. These hitherto unmitigated miscarriages of justice and criminal activity should not be allowed to continue. I trust this court will not allow this appearance to continue.

11. In addition, the family court standard of "the best interest of the child" is so vague as to be unconstitutional. **What is the 'best interests of the children'** that the state is supposed to be concerned about? And, is this merely a state interest? Obviously, as advanced and rejected in Ex Parte Virginia, we see the basic agruement against permitting 14th Amendment rights to take precedence over 11th Amendment rights: "The government created by the Constitution was not designed for the regulation of matters of purely local concern. The States required no aid from any external authority to manage their domestic affairs." In the instant case, can this basic arguement apply when so many federal laws come into play? The Parental Kidnapping Prevention Act, The Child Abuse Prevention Act, and The Uniform Child Custody Jurisdiction Act? Can this basic arguement apply when the state receives upwards of $2 Billion dollars in federal aid to help fund the state's enforcement of these acts of Congress that the State has committed in an unconstitutional manner? Are such acts

of a local nature only? Furthermore, the very fabric of society is being erroded by such actions on the part of the States, as stated by no less than the President of the Untited States, who has authorized commissions to study the matter (See Complaint, Exhibits 12 & 13). Surely, if the President of the United States talks about these matters and issues executive orders that all government personnel should eliminate all discrimination against fathers; and do everything in their power to involve fathers in the lives of their children, then this is not a local issue, but a matter of national concern that belongs in federal court. These presidential commissions have printed findings, stating no less than that which every fathers' rights group has been saying for years (See, Complaint, Exhibit 14). Yet, fathers groups have been attacked ad hominem, in contradiction to studies, statistics and facts: that the wanton removal of fathers is detrimental to the 'bests interests of the child'; that AFDC is a tremendous financial incentive to; and abused to; throw fathers out of the home and deny fathers all access to their children; and that denial of paternal access to the child is thee greatest cause of juvenile deliquency. All the defendants have acted in contradiction to the facts and executive orders and are all guilty of dereliction of duty, even the mother whose hatred or dispute with the father has blinded her, and allowed her to commit dastardly crimes against her own children. Therefore, in the pursuit of justice and in dealing with a federal issue which has no redress in state court, this court has an obligation to correct and repair the damaged father-child relationship perpetrated by the defendants.

12. It is buffoonery and sophistry on the part of the NYS Attorney General as well as merely pleadings and beggings to apply purely subjective standards of "incoherency" to cogent arguements that are well grounded in fact. How can the appellant-plaintiff's arguments be incoherent if he has cited arguements from other attorneys who have argued the

same issues and even arguements from the former NYS Governor [Mario Cuomo] contending that laws may be unconstitutional? How can the appellees claim the appellant's arguments are incoherent when the appellant has merely cited US Supreme Court justices? The contradiction is not only clear, but the statement is merely vapid and insipid and nothing more than an act of extremely corrupt state officials caught in the act of criminal violations of due process, defrauding Congress and the Treasury, bribery and bigotry, begging the judges of the US Court of Appeals to cover-up their wicked and diabolical actions simply because the appellees-defendants are "brothers and sisters" of the judges on the panel. Many US Supreme Courts have refused to accept such pleadings in their decisions. Bigotry, criminal activity and corruption is not tolerated by the US Courts in any form, by anyone. No man [or woman] is above the law. There is no aristocracy in the United States. The appellant-plaintiff refers the court to the appellant-plaintiff's pleadings of 95-CV-931, especially the Memorandum of Law.

13. The court should note that the appellees are attorneys and represented by an attorney and; the appellees' brief has a red cover. The court will decide if the appellee's filings should be dismissed for not following procedure.

14. The court should also note that the appellant has filed a motion for an extension of time and requested eighty (80) days to properly respond to all the appellees and their claims. However, the appellant was only granted a two (2) week extension. Therefore, the court should over look the Pro Se appellant's inability to find proper citations for all cases, as the appellant does not have the requisite access to search facilities

PLEA FOR RELIEF:

1. The appelle should no longer be granted an oral arguement and;
2. That the relief requested against the appellees be granted and;
3. That all motions in the proceedings of 95-CV-931 [ERK] be heard de novo, including those motions involving the State defendants and;
4. Any other relief that the US Court of Appeals deems necessary.

_____/s/_____ __/s/_____

Harlow Zirkind, Appellant NOTARY

547 Wyndham Road

Teaneck, NJ 07666

201-836-7557

Exhibit 6 – Extension of hearing notices, NYS Family Court, case# O-5998/93; V-8536/93; and V-8537/93.

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MALKITZEDEK ZIRKIND

DOCKET NO. V-08537/93

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

THIS CASE HAS BEEN SCHEDULED FOR A HEARING ON JANUARY 10, 1994 AT 9:15 AM IN PART I ON FLOOR 5 OF THIS COURT.

BY ORDER OF THE COURT
/s/
CHARLES EMANUELE
CLERK OF COURT

DATE 11/24/93

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MALKITZEDEK ZIRKIND

DOCKET NO. V-08537/93A

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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DATE 11/24/93

/s/
CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MALKITZEDEK ZIRKIND
DOCKET NO. V-08537/93B

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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ON JANUARY 10, 1994 AT 9:15 AM IN PART I ON FLOOR 5 OF THIS COURT.

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DATE 11/24/93

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CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MALKITZEDEK ZIRKIND

DOCKET NO. V-08537/93C

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BY ORDER OF THE COURT

DATE 11/24/93

/s/
CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MALKITZEDEK ZIRKIND

DOCKET NO. V-08537/93D

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BY ORDER OF THE COURT

DATE 11/24/93

/s/

CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF PESACH ZIRKIND
DOCKET NO. V-08537/93

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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BY ORDER OF THE COURT

DATE 11/24/93 /s/

CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF PESACH ZIRKIND
DOCKET NO. V-08537/93A

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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FLOOR 5 OF THIS COURT.

BY ORDER OF THE COURT

DATE 11/24/93 /s/

CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF PESACH ZIRKIND
DOCKET NO. V-08537/93B

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BY ORDER OF THE COURT

DATE 11/24/93 /s/

CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF PESACH ZIRKIND
DOCKET NO. V-08537/93C

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE

WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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BY ORDER OF THE COURT

DATE 11/24/93

/s/
CHARLES EMANUELE
CLERK OF COURT

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF PESACH ZIRKIND
DOCKET NO. V-08537/93D

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

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BY ORDER OF THE COURT
/s/
CHARLES EMANUELE
CLERK OF COURT

DATE 11/24/93

FAMILY COURT OF THE STATE OF NEW YORK
KINGS
283 ADAMS STREET
BROOKLYN, NY 11201

IN THE MATTERS OF MAZAL ZIRKIND
DOCKET NO.
VS HARLOW ZIRKIND O-05998/93

YOU ARE HEREBY NOTIFIED THAT THE COURT HEARING DATE IN THE ABOVE ENTITLED CASE WHICH WAS SCHEDULED FOR DECEMBER 6, 1993 AT 9:15 AM IN PART I HAS BEEN CHANGED

THIS CASE HAS BEEN SCHEDULED FOR A HEARING

ON JANUARY 10, 1994 AT 9:15 AM IN PART I ON FLOOR 5 OF THIS COURT.

BY ORDER OF THE COURT

DATE 11/24/93

/s/
CHARLES EMANUELE
CLERK OF COURT

Exhibit 7 – USD 95-CV-931 EDNY, Opposition Papers to NG Berrill

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

Harlow Zirkind, plaintiff

- against -

State of New York, et al.

95-CV-931 (ERK-JLC)
MOTION IN OPPOSITION OF MOTION TO DISMISS BY NAFTALI BERRILL, DEFENDANT

----------X

1. The plaintiff, Harlow Zirkind, will move this court, before the Honorable Judge Korman, at the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, NY, on the ____ day of the month of _____, 19___, dismissing defendant's, Naftali Berrill, defendant's Answer and/or Motion to Dismiss; ordering discovery; and/or setting of a trial date to determine matters of fact and law in dispute; if appropriate imposing sanctions as pursuant to F.R.C.P. 11, for requesting sanctions when sanctions are not warranted or justified; and for any such further relief as the court may deem just and proper.

2. The plaintiff hereby reaffirms each and every allegation contained in the Complaint that the defendant acted in concert with other defendants; conspired and/or violated the plaintiff's civil rights intentionally or negligently; and/or made and/or aided and abetted intentionally or negligently: misrepresentations to, and/or perpetrated frauds upon New York State Courts as well as inflicting emotional harm upon the defendant and his infant issue: Pesach Hai Shaul and Malkitzedek Zirkind. In addition, the plaintiff will augment and further define those claims with further claims and/or instances within these opposition papers and in the memorandum of law to be submitted after all defendants have answered.

3. As to the defendant's claim that the plaintiff fails to state a cause of action against the defendants, this defense is ridiculous.

4. The defendants violated the plaintiff's civil rights many times in many ways and in various combinations and permutations. A brief statement of the cause of action is stated below which in no way detracts from the detailed description of events in the Complaint or to be submitted in the memorandum of law:

A. The defendants Mazal Zirkind, Mark A. Feldman, Herschel Kurzrock, Mendel Epstein, and The Rabbinical Alliance of America, conspired to coerce the plaintiff to commit a religious ritual that he does not wish to perform as well as to consent to an unequitable divorce agreement, by initiating and protracting a malicious prosecution predicated on false child and sexual abuse charges and abusing the process which includes but is not limited to New York State Family Court, court appointed mental health facilities and evaluators and other New York State and City government officials and agencies; all of which amounts to kidnapping under the color of the law.

B. In addition, they acted in this manner for: sexism; sizeism; the (religious or dogmatic) belief or creed in divorce and that divorce is good for children as opposed to the Judeo-Christian belief in marriage and belief that divorce is bad for children; Hellenistic Jewish practices and beliefs; greed; corruption; and lying and covering up.

C. By the above mentioned actions and/or processes, the plaintiff had monies and property confiscated; was evicted from his home; denied access to his home; and denied access, society and parenting of his children.

D. Naftali Berrill intended and attempted to perpetrate a fraud upon Brooklyn family court in

conspiracy with public officials (particularly the law guardian, Stella Arsenakos) and the co-defendants listed in section A of this paragraph in order to violate the plaintiff's civil rights as well as aid and abett the discriminatory and unconstitutional goals of the co-defendants listed in section A of this paragraph and has committed similar acts of fraud upon New York State family courts based upon prejudice, discrimination, and bigotry in order to deny fathers custody and/or visitation. Naftali Berrill is a mental health worker that provides "psychological evaluations" for family court and makes "custody and visitation" recommendations to family court judges. Dr. Berrill's frauds upon the court and false forensic reports are government funded and a substantial part of his income. These frauds perpetrated on the court deny primarily fathers -- an act of discrimination in and of itself -- their parental rights which includes visitation rights. In addition, Dr. Berrill shares the beliefs of the other defendants (section B this paragraph) and abused his position to pereptuate fraudulent reports to promote his beliefs. In addition, Dr. Berrill's function in family court inherently violates the Fifth (5th) Amendment.

5. The plaintiff is filing In Propria Persona. The plaintiff is not a lawyer or student of United States law. Therefore, in accordance with District court procedure, the plaintiff's Complaint must be liberally construed and if some claim has been stated, no matter how inarticulately, the court should address the matter. For brevity's sake, the plaintiff respectfully refers this court to the section of the original Complaint, titled IN PROPRIA CONSIDERATIONS, for case citations as precedents and substantiating this claim. In addition, the plaintiff is attempting to proceed in accordance with F.R.C.P. as much as possible, if he does not, he apologizes to the court but requests that in accordance with F.R.C.P. the court grant the plaintiff the lattitude he deserves as a laymen.

6. To all matters of fact that the defendant states he does not

have sufficient knowledge of, the plaintiff hereby reaffirms his prior statements of fact and in lack of opposition the court should consider that in the plaintiff's favor when making a decision.

7. To all legal conclusions that the defendant denies to draw conclusions to, the plaintiff reasserts his claims and in absence of oppostion to contrary, respectfully asks the court to rule in the plaintiff's favor.

8. That any and all legal and factual claims, legal arguements and citations, cross-claims, etc. made by the plaintiff in the Complaint as well as in any and all other papers, pleadings, including but not limited to: Replies, Opposition Papers, Memorandum of Law to the other co-defendants, also applies to this defendant.

9. That as the defendant in paragraph 2 of his Answer "refers all questions of fact to the trier of fact", the plaintiff requests that orders of discovery be issued against all defendants and only after discovery from all defendants has been completed, that a tentative trial date be sent for deteremination of fact.

10. In Exhibit B of the defendant's Motion To Dismiss, an affidavit by Dr. Berrill, Dr. Berrill advances as a defense in paragraphs #3 & #4, that he never met with the plaintiff, nor his representative, and told the court that the report was incomplete. Not-with-standing these claims, which amount to the defendant's admission that he had no knowledge of the facts, Dr. Berrill suggested and recommended the termination of the plaintiff's constitutional parental rights. This behaviour and report is unconstitutional. And, as an act of a court appointed official, is inherently denying the plaintiff due process which is required prior to the termination of a constitutional right.

11. In paragraph #5 of Exhibit B of the defendant's Motion To Dismiss, Dr. Berrill does not deny being a child psychologist or any kind of employee for the school system.

12. Exhibit C of the defendant's Motion To Dismiss, was filed with the court without due process. This report was given to

Mark A. Feldman, Esq. and Stella Arsenakos, Esq., but not to the plaintiff's attorney. Even though those attorneys were requested by the plaintiff's lawyer for a copy of Dr. Berrill's report, they refused to surrender a copy of the report that had been supposedly submitted to the court and was being used as evidence against the plaintiff. This was only remedied by an official request by the plaintiff's attorney to Judge Burstein who told those attorneys to give the plaintiff's attorney a copy. This should be a matter of record on the transcripts of Brooklyn Family Court, unless the transcripts have been lost or tampered with.

13. As this so-called psychological evaluation of a person that Dr. Berrill never met with, was produced and filed without due process; and was used by the newly appointed law guardian, James E. Neuman, Esq. as so-called evidence against the plaintiff on Appeal Nos. 95-01328, 95-01491, 95-01494, & 95-01497; the State of New York has clearly indicated that it is continuing to follow the same course of unconstitutional action, has no intention of altering that course, that a fair trial -- if any trial -- is impossible for the plaintiff within New York State, and therefore the Younger Abstention, Bad Faith Exception applies, and the district court has jurisdiction.

14. The court order of Exhibit A of the defendant's Motion To Dismiss was issued ex-parte. There was no court date, hearing or proceeding of any kind on Sept. 1, 1993. Also, it clearly state's that it is upon the law guardian's, Stella Arsenakos, motion. Stella Arsenakos did indeed select Dr. Berrill who made this bogus report, a contrived and controverted affidavit which is nothing more than the parroting of Mazal Zirkind and prayer for the same relief as Mazal Zirkind's petition instead of the obvious professional opinion that without sufficient facts, no determination can be made.

15. If as the defendant claims in paragraph 7 on page 3 of his affirmation, that 'The court was informed that only an incomplete report was available." and that "it is difficult .... to reach any specific conclusions about this case" **THEN, HOW**

DID DR. BERRILL ARRIVE AT THE SPECIFIC CONCLUSION THAT SUPERVISED VISITATION WAS NECESSARY? Furthermore, Dr. Berrill clearly states multiple times in his papers, most notably page 2, paragraph 6 of his Affirmation, that "There are no rules or regulations as to how the examinations are to be conducted." Such a charltan, practicing chicanery, selling snake oil and quicksilver to the courts has no veracity or comparison to the presence of documented, subpeonaed medical records indicating that it was a physical impossibility for the plaintiff to have committed the acts charged. In addition, the record is devoid of any medical records at all, which includes records of abuse which considering the Mazal Zirkind's petition to family court, broken bones and bruises should have been obvious. Before making a purely subjective report based upon "no rules or regulations" the defendant-quack, should have -- as the court should have -- examined the physical evidence or lack thereof. This is unprofessional and unscientific behaviour on the part of Dr. Berrill.

16. As to the defendant's claim in paragraph 8 on page 3 of his affirmation, the defendant raises the defense that to his understanding Harlow Zirkind's orders to vacate where dismissed and the defendant in paragraph 11 on page 3 of his affirmation, refers to transcripts Exhibits G & H of his affirmation. Yes it is true that the orders were vacated. However, examination of the transcripts clearly indicate that there was no due process afforded with the vacating of this order as well as that no hearings of any kind were held in contradiction to New York State statutes. In addition, on a court date the orders were vacated, a person was in the courtroom when this occurred. This person had been in the courtroom before the litigants entered and had ex-parte communications with the judge. This happened on several other court dates as well. On one occassion the plaintiff heard this man tell Mazal Zirkind, "Did he go to supervised visitation?" Mazal Zirkind then shook her head from side to

side as if gesturing "no". The man then responded, "Don't worry. We will get him anyway". Upon information and belief, this person was either Naftali Berrill or Nick Chimenti: As Harlow Zirkind has never met with either of these people, these individuals will have to step forward and identify themselves to clarify this allegation. AND, if Naftali Berrill was the man in the courtroom, then Naftali Berrill was fully aware that there was no due process being afforded and Naftali Berrill heard Judge Philip C. Segal's nasty, obnoxious, overbearing, arrogant, condescending manner of speech.

17. In paragraph 11 on page 3 of the defendant's affirmation, the defendant's attorney advances the defense that the court awarded the mother custody and refusal to cooperate with a psychological evaluation is sufficient to award custody.

A. It is simply not the law in New York State or the United States of America that refusal to cooperate with a psychological evaluation is grounds for awarding custody to anyone.

B. The attorneys for Naftali Berrill, who prepared and signed the affirmation, were fully aware by the transcripts supplied in their exhibits that no hearing or trial was held, that Harlow Zirkind was never afforded any opportunity to present evidence or have witnesses testify on his behalf or refute any accusations. In sum, the attorneys for Naftali Berrill have sanctioned denial of due process; and advance the denial of due process and court orders based on no law as absolution for their client. This is simply not a defense but an incriminating statement that the attorneys for Naftali Berrill are as corrupt and lawless as their client.

18. In contradiction to paragraph 14, page 4 of the defendant's affirmation, a witnesses immunity is not absolute and witnesses that commit perjury have no immunity.

19. In contradiction to paragraph 16, page 4 of the defendant's affirmation, Naftali Berrill premeditatedly filed a disparaging report without ever seeing Harlow Zirkind. This is unprofessionial despite Naftali Berrill's claims that there are no

guidelines or rules in his so called profession. In addition, based upon information and belief, this was done for hatred and to coerce Harlow Zirkind to perform specific religious rituals. This is in direct contradiction to 42 USC 5106a. Based upon information and belief, Naftali Berrill is connected with "Agunah" cults, such as Mendel Epstein's Agunah Inc. In addition, based upon information and belief, Naftali Berrill has perpetrated other frauds upon the court.

20. In contradiction to the defendant's claim that he did not perform a "state" action that is under the color of the law for 42 USC 1983 adjudication, the defendant integrally participated in a court case which is a state action for 42 USC 1983 purposes. Furthermore, without Naftali Berrill, said state action would have been impossible as the decision rendered was based solely upon Harlow Zirkind's refusal to meet with Naftali Berrill.

21. Contrary to the defendant's claim, suit can be brought for misconduct as in the recent Holly Ramona case and/or if fraud was perpetrated upon the court.

22. As to the Title 18 violations that the plaintiff listed in his Original Complaint, under a heading "Other Considerations"; not being an attorney, the plaintiff was unsure at the time of filing if he could charge the defendant with these violations. So as not to lose any opportunities, but unsure of his claim, the plaintiff stated these statutes separately. As the plaintiff has been informed, he may not charge the defendant's with these crimes, this is a matter for the U.S. Attorney. However, the unchargeable (by the plaintiff) violations of these statutes by the defendants certainly help clarify the matter of controversy: The deprivations of human and civil rights at question in this lawsuit. As the plaintiff filed In Propria Persona, the plaintiff respectfully requests that the court ignore this oversight on the plaintiff's part.

23. As judicial decisions can not be arbitrary and whimsical but must rely on careful examination and consideration of the facts, it is a fortiori that any judicial decision based upon an arbitrary and whimsical decision must fail. Such a judicial

decision is arbitrary and whimsical as it is based on arbitrary and whimsical so-called evidence. For, a so-called forensic report that is not based upon any rules or guidelines, is not scientific or professional; and is arbitrary and whimsical; innately denies due process and can not be used for a judicial decision; and if it is, then that judicial decision innately has denied the litigant due process.

24. In addition, the plaintiff challenges the defendant's statement that there are no rules or regulations to his profession or child custody evaluation. The American Psychological Association does have an Ethical Principles of Psychologists and Code of Conduct, (American Psychological Association, 1992, 47:12, 1597-1611) as well as a Guidelines For Child Custody Evaluations in Divorce Proceedings, (American Psychological Assoc. 1994, 49:7 677-680), ; Model Standards Of Practice For Child Custody Evaluation, Association of Family and Conciliation Courts. October, 1994, Family and Conciliation Courts Review. 32(4):504-513. And, the plaintiff maintains that Naftali Berrill has violated that Code of Ethics and not conformed to the Guidelines For Child Custody Evaluations. In addition, Naftali Berrill has not held himself to the professional standards in his profession. Therefore, as in Daubert v. Merrell Dow Pharmaceuticals Inc., 125 L. Ed. 2d 469, 113 S. Ct. 2786 (U.S. June 29, 1993), the standard for admissibility of expert testimony concerning scientific evidence as is defined in Frye v. United States, 54 App. D.C. 46, 293 F. 1013 (D.C. Cir. 1923), which limits admissibility to evidence that has "gained general acceptance" in the relevant scientific community, to "scientific, technical, or other specialized knowledge" that "will assist the trier of fact to understand the evidence or to determine a fact in issue": Naftali Berrill's report to family court is not scientific as it is controverted and contradictory; reached a conclusion without a basis in facts which is inherently unscientific; and this so-called evidence and report is of no aid to the trier of fact but was used as THE BASIS FOR A JUDICIAL DECISION. The judicial

decision or recommendation for the judicial decison of the termination of the US Constitutional right to parent -- which Naftali Berrill made -- requires CLEAR AND IMMINENT HARM TO THE CHILDREN. Lacking any medical proof or any other kind of hard evidence of any kind of physical child abuse, AND never having met the father: It was/is unethical, amoral, contrary to the Code of Ethics, contrary to the Guidelines For Child Custody Evaluation, and ILLEGAL for Naftali Berrill to make such a recommendation, especially as the recommendation had no basis.

25. In addition, one can not help but notice the differences between the unsigned copy of Naftali Berrill's report submitted to this court, and the signed copy submitted to Brooklyn family court and the Appeallate Division of the Second Department (Exhibit 1). The defendant's claim in his pleadings about his original NOTES being lost in a computer disk crash is totally irrelevant. The original was filed with the court and there are many copies available to many individuals. As the family courts and its officers have a history øf falsifying and losing records, (Exhibit 5, Motion in Opposition to the State of New York, et. al.) the plaintiff maintains that the plaintiff's copy should be taken over any other submitted copy. And, that Naftali Berrill's submission of this tampered evidence or misrepresented evidence borders upon fraud and misrepresentation upon this court.

PROFESSIONAL STANDARDS AND UNPROFESSIONAL CONDUCT

26. In spite of Dr. Berrill's ludicrious claim that there are no standards or guidelines for child custody evaluations, the American Psychological Association (APA), has published the Ethical Principles of Psychologists and Code of Conduct (Code of Conduct) as well as Guidelines for Child Custody Evaluations in Divorce Proceedings (Guidelines for Child Custody). **BASED UPON TELEPHONE INQUIRY WITH THE MEMBERSHIP DEPARTMENT OF THE NATIONAL HEADQUARTERS OF THE APA, DR.**

BERRILL IS A MEMBER OF THE APA. THEREFORE, DR. BERRILL IS REQUIRED TO ADHERE TO THE CODE OF CONDUCT AS WELL AS THE GUIDELINES FOR CHILD CUSTODY! In addition, the psychological reports made by Dr. Berrill, that are made without any guidelines (by Dr. Berrill's admission) are used for the denial of constitutional rights, particulalry the US constitutional right to parent. Such a procedure, of using a report made without guidelines or standards, lends to arbitrary and whimsical decisions which is an admission of following an unconstitutional course of action (See Plaintiff's Memorandum of Law, especially Yick Wo v. Hopkins, Chy Lung v. Freeman, Soon Hing v. Crowley). This unconstitutional course of action, is then used in conjunction with family court to deny constitutional rights. This makes Dr. Berrill a conspirator by 42 USC 1985(3) definition and a state actor. Furthermore, in light of the guidelines provided by the APA and Dr. Berrill's assertion that there are no guidelines: Dr. Berrill's assertion is fraud and misrepresentation upon this court which should be punished by contempt of court.

27. The APA's introduction to the Guidelines for Child Custody states the purpose of the Guidelines, "Decisions regarding child custody and other parenting arrangements occur within several different legal contexts, including parental divorce, guardianship, neglect or abuse proceedings, and termination of parental rights. The following guidelines were developed for psychologists conducting child custody evaluations, specifically within the context of parental divorce. These guidelines build upon the Americn Psychological Association's Ethical Prinicples of Psychologists and Code of Conduct". One implicit characteristic of the APA's philosophy is that one parent must have custody in a divorce. That should there be a divorce, then one parent must be awarded custody and the psychologist must make this decision or help the court make this decision. This is contrary to American Association of Marriage and Family Therapy that tries to maintain a lasting,

meaningful parental role for both parents. For when one parent has custody and absolute control of the child the other parent becomes a non-entity and persona non grata in the child's life.
28. Section II. 4. of the Guidelines for Child Custody state, "The role of the psychologist is that of a professional expert who strives to maintain an objective, impartial stance." This is explained as, "The psychologist should be impartial regardless of whether he or she is retained by the court or by a party to the proceedings. If either the psychologist or the client cannot accept this neutral role, the psychologist should consider withdrawing from the case. If not permitted to withdraw, in such circumstances, the psychologist acknowledges past roles and other factors that could affect impartiality." As Dr. Berrill may have made statements to the mother such as "Did he go to supervised visitation? [.....] Don't worry we will get him!"; may have had ex-parte communications with Judge Segal: The ex-parte communication is not in doubt, the person having the ex-parte communications is in doubt; and did not give the plaintiff's attorney a copy of the so-called report -- which is nothing more than heresay and a parroting of the mother's affidavit -- while giving the law guardian and the mother's attorney a copy of the report; all cast great doubt as to Dr. Berrill's neutrality. Furthermore, when the plaintiff alleged violations of his constitutional rights, conspiracy to violate constitutional rights, the premeditated abuse of process for purposes of religious coercion; the plaintiff listed some of the co-conspirators in an affidavit submitted to Hearing Examiner Dorothy McCarrick. Among those listed was Rivke Haut. Rivke Haut a.k.a. Renee Haut is on the board of Agunah Inc. Mendel Epstein, defendant, has been named in articles appearing in the Jewish Press as the founder of Agunah Inc. and a very hard worker for the organization and "*the cause*". Based upon information and belief and the accounts of victims and witnesses and the over abundance of circumstantial evidence: Mendel Epstein, and his organization have been involved in abusing the process, family court and filing child

abuse and sexual abuse claims in conjunction with corrupt social workers and psychologists for at least a decade and a half: This includes the bribing of so-called mental health workers to produce the necessary reports to unlawfully deny fathers custody and visitation. Rivke Haut had communications with Mazal Zirkind while Givon Zirkind was still living in the same house, and that based upon information the plaintiff maintains he can prove based upon subpeanoed records that Dr. Berrill has a relationship with Rivke Haut as a member or supporter of Agunah Inc. and/or received monies from either Rivke Haut and/or Agunah Inc. This would make for a tremendous conflict of interest and lack of neutrality for which Dr. Berrill should have never taken the case in the first place. Careful examination of bank and other financial records of both Agunah Inc. A TAX EXEMPT, NOT FOR PROFIT ORGANIZATION and Rivke Haut should bear this out. This court should note that the law guardian, Stella Arsenakos, secured the services of Naftali Berrill in an ex-parte order before Judge Karen Burstein. The onus is upon Stella Arsenakos and Karen Burstein to prove they had no knowledge of this alleged impropriety. Furthermore, this is not an isolated incident. Dr. Benjamin Lerner of "Getting Equitable Treatment" (Opposition Papers to State, Exhibit 21) is also a court appointed psychologist; and based upon information and belief, also receives monies from Agunah Inc., also appears to have consistently filed slanderous and damaging reports against men such as Michael Hizme, who wife's are 'clients' of Mendel Epstein, the founder of Agunah Inc.

29. Section II. 5. A. of the Guidelines states, "A psychologist contemplating performing child custody evaluations is aware that special competencies and knowledge are required for the undertaking of such evaluations. Competence in performing psychological assessments of children, adults, and families is necessary but not sufficient. Education, training, experience, and/or supervision in the areas of child and family development, child and family psychopathology, and the

impact of divorce on children help to prepare the psychologist to participate competently in child custody evalutions. The psychologist also strives to become familiar with applicable legal standards and procedures, including laws governing divorce and custody adjudications in his or her state or jurisdiciton." As the plaintiff charged and the defendant did not deny, the defendant does not have the requisite hours of expercience in supervision to make a competent decision.

30. Section II. 6. of the Guidelines titled "The psychologist is aware of personal and societal biases and engages in nondiscriminatory practice." proscribes discrimination and states: "The psychologist recognizes and strives to overcome any such biases or withdraws from the evaluation." As Dr. Berrill does a significant amount of work for/with New York State, specifically the family courts, he should be aware of the discriminatory policies in place by the state, particularly the family court system. If Dr. Berrill was ethical and professional, we would refrain from dealing with the state and family court cases and concentrate on his private practice. But, Dr. Berrill is a bigotted, biased and corrupt individual that has no moral dilema in taking misappropriated state and federal funds for evaluations that will be misused by corrupt public officials, especially family court judges, law guardians and social workers.

31. Section III. 11. of the Guidelines, titled "The psychologist uses multiple methods of data gathering." states: "Important facts and opinions are documented from at least two sources whenever their reliability is questionable. The psychologist, for example, may review potentially relevant reports (e.g., from schools, health care providers, child care providers, agencies, and institutions)." As Dr. Berrill never considered subpeonaed documented evidence of the plaintiff's physical inability to have committed the acts alleged; Dr. Berrill's report is undocumented, unscientific, and bogus. Furthermore, the plaintiff was never allowed to answer the allegations of the family court petition in a court of law. Obviously, if the

original allegations in Mazal Zirkind's petition can not be validated and are refutef by documentable evidence, then the entire petition is a fraud and subjective reports of conjecture are totally irrelevant. After all, a psychologist at best renders **AN OPINION**, not a statement of fact. As such, Dr. Berrill knew that the plaintiff was never given a hearing to refute the allegations and that if the allegations in Mazal Zirkind's petition were false then the entire petition is bogus and nothing but perjurious statements and an act of malicious prosecution. When the plaintiff submitted documented evidence to the court, Dr. Berrill did nothing to modify his report or opinion to the court and it is quite possible that he is the person that entered Judge Segal's courtroom on days when the plaintiff was supposed to have hearings and was in the courtroom when Judge Segal made his premeditated, malicious, illegal, unconstitutional orders that were in no way errors of law. The viciousness in Judge Segal's voice was obvious to anyone sitting in the courtroom. **Dr. Berrill purposely ignored important facts.** This is unprofessional and unethical conduct as well as invalidates the report itself. In addition, as the ex-parte report was a basis for terminating the US Constitutional right to parent of the plaintiff, therefore, the defedant is responsible for this violation of constitutional rights and the order terminating the plaintiff's US constitutional parental rights is null and void.

32. Section III. 14. is titled "Recommendations, if any, are based on what is in the best psychological interests of the child." It is clear beyond a shadow of a doubt, that the best interests of the child is to have two parents in the context of the family. Certainly the family context is the ideal, although not always possible and that two parents are the optimum. (See Exhibits 12, 13, & 14 of the Opposition Papers to the State of New York and the Memorandum of Law, Point V). Barring any evidence to the contrary, **WHICH DR. BERRILL DID NOT HAVE,** it was unprofessional, unethical and illegal for Dr. Berrill to make any recommendation suggesting in any way

that the plaintiff's US Constitutional rights be terminated.

33. The Guidelines are in addition to the Code of Conduct (Exhibit 3). Paragraph 2 of Column 1 of Page 1598, states "Membership in the APA commits members to adhere to the APA Ethics Code and to the rules and procedures used to implement it. Psychologists and students, whether or not they are APA members, should be aware that the Ethics Code may be applied to them by state psychology boards, courts, or other public bodies." In the absence of any "guidelines" as Dr. Berrill asserts, the plaintiff maintains the APA Guidelines and Code of Ethics should be used.

34. As stated in the title to Principle C of the General Principles listed on page 1599, a psychologist has a "Professional and Scientific Responsibility" which Dr. Berrill ignored.

35. As stated in Principle D of the General Principles listed on page 1599-1560, titled "Respect for People's Rights and Dignity"; "Psychologists are aware of cultural, individual, and role differences, including those due to age, gender, race, ethnicity, national origin, religion" and that "Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone unfair discriminatory practices." As stated above, the state of New York is engaged in a documented, discriminatory, public policy against fathers. Dr. Berrill's involvement with the court must have brought this to his attention. It was unprofessional, unethical and illegal for Dr. Berrill to aid in unconstitutional, discriminatory public policies; rather it was his legal, moral and professional obligation to report this to the appropriate authorities.

36. As stated in principle F on page 1600 of the Code of Conduct, Dr. Berrill has a "Social Responsibility" "to the community and the society in which they live and work" to "contribute to human welfare". Aiding and abetting unconstitutional actions; abuse of process; malicious prosecutions; systematic, methodical family break-ups and

religious cults interested in the same can hardly be constured as contributing to human welfare.

37. Section 1.06 of the Code of Conduct, "Basis for Scientific and Professional Judgements" states "Psychologists rely on scientifically and professionally derived knowledge when making scientific or professional judgements or when engaging in scholarly or professional endeavors." As stated above, Dr. Berrill's report is not based on fact and therefore unscientific, consequently Dr. Berrill's judgement is unprofessional.

38. As stated above, Dr. Berrill did not take into account "Human Differences" as required by Section 1.08 of the Code of Conduct; was not "Respecting Others" as required by Section 1.09 of the Code of Conduct; and should have complied with "Nondiscrimination" as required by Section 1.10 of the Code of Conduct.

39. As stated above, Dr. Berrill allowed the "Misuse of Psychologist's Influence" proscribed by Section 1.15 of the Code of Condcut as well as allowing the "Misuse of Psychologists' Work" proscribed in Section 1.16. of the Code of Conduct. Dr. Berrill's actions and report had an adverse affect on the plaintiff and his children by destroying their family and terminating the plaintiff's US Constitutional parental rights. In addition, as the State of New York is enforcing a discriminatory, public policy, which Dr. Berrill, should have been familiar with due to his experiences with family court, Dr. Berrill allowed his work to be misused. Furthermore, Dr. Berrill took no corrective action, especially by NOT noting and/or incorporating the subpeanoed medical records of the defendant into his report. As a matter of fact, these medical records are not mentioned in the report, nor are they cited as casting any shadow of doubt upon the mother's-defedant's claims raised in family court. This is unprofessional, immoral and illegal conduct on the part of Dr. Berrill.

40. Section 1.21(a) of the Code of Conduct "Third-Party Requests for Services" states, "When a psychologist agrees to

provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the psychologist (such as therapist, organizational consultant, diagnostician, or expert witness), the probable uses of the services provided or the information obtained, and the facts that there may be limits to confidentiality." As a third-party service was requested in the instant case -- and the plaintiff states as fact to which many witnesses can testify -- under these circumstances, there is no Miranda type warning issued by the so-called court appointed: therapists, psychologists and/or social workers: that this interview can be used against the defendant in a court of law to deny the defendant, his/her US Constitutional rights, including but not limited to the right to parent, in spite of the US Constitutional right to remain silent: DR. BERRILL IS GUILTY OF UNETHICAL, IMMORAL AND ILLEGAL CONDUCT. The court should note that Dr. Berrill did not deny the plaintiff's charge in the Complaint (paragraphs 75, 76, 77, 78, 79) that such action violates constitutional rights, due process, and the 5th Amendment.

41. Section 7.02 of the Code of Conduct describes "Forensic Assessments". Section 7.02(a) of the Code of Conduct states, "Psychologists' forensic assessments, recommendations, and reports are based on information and techniques sufficient to provide appropriate substantiation for their findings." As Dr. Berrill made no inquiries into the veracity of Mazal Zirkind's family court petition, and never attempted to locate any medical records of Mazal Zirkind or the infant children Pesach Hai Shaul Zirkind or Malkitzedek Zirkind who surely must have required serious medical attention and suffered broken bones or worse by violent, Herculean feats described by Mazal Zirkind in her petition to family court, and no mention of any review of any medical records is present in Dr. Berrill's report (Exhibit 1): Dr. Berrill's report violates Section 7.02 of the Code of Conduct and is replete with heresay while concurrently

being devoid of any factual basis, unprofessional and inadmissable as evidence in a court of law. In addition, Dr. Berrill made no attempt to verify the plaintiff's claim to physical disabilities and inability to perform the violent, vicious, Herculean feats described.

42. Section 7.02(b) of the Code of Conduct states, "Except as noted in (c) below, psychologists provide written or oral forensic reports or testimony of the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusinons." As Dr. Berrill confessed, Dr. Berrill never met with the plaintiff; it was totally improper for Dr. Berrill to have filed a nine (9) page report with the court which is nothing more than a parrotting of the mother-defendant's claim. Furthermore, as Dr. Berrill had no contact with the plaintiff-father (WHICH DR. BERRILL ADMITS AND ADVANCES AS A DEFENSE IN HIS MOTION TO DISMISS!), he had no right recommending anything! **DR. BERRILL, CERTAINLY HAD NO RIGHT TO RECOMMEND AN INFRINGEMENT OF HUMAN AND US CONSTITUTIONAL PARENTAL RIGHTS, IN ANY SHAPE MANNER OR FORM, ESPECIALLY SUPERVISED VISITATION! Dr. Berrill's report should have contained nothing more than one sentence:** ***"The father, Mr. Zirkind, did not meet with me and therefore no determination or recommendation can be made."*** Anything more is unprofessional, proscribed by the Code of Conduct, and fraud. It is impossible for Dr. Berrill to make any recommendation of any kind without seeing all the parties involved. And, as stated above, but reiterated here for emphasis, the Guidelines for Custody Evaluation states in Section II. 4. "The psychologist **DOES NOT ACT AS A JUDGE, WHO MAKES THE ULTIMATE DECISION APPLYING THE LAW TO ALL RELEVANT EVIDENCE."** As such, Dr. Berrill's recommendation is unscientific; without basis in fact; and in sum and substance a

judicial decision -- made without any evidence -- which is outside his jurisdiction. **AS DR. BERRILL, ACTED OUTSIDE HIS JURISDICTION, DR. BERRILL HAS NO IMMUNITY WHAT-SO-EVER!**

43. Section 7.02(c) of the Code of Conduct states, "When, despite reasonable efforts, such an examination is not feasible, psychologists clarify the impact of their limited information on the reliability and valdity of their reports and testimony, and they appropriately limit the nature and extent of their conclusions or recommendations." Dr. Berrill's recommendation of supervised visitation and termination of parental rights without ever having met the father, with a one line provisio that Dr. Berrill has not met the father, is hardly a clarification of the impact of the limited information and reliability of the report. Under the circumstances that Dr. Berrill operated, there is no reliability to his report, no facts. Ergo, he can not draw any conclusions, much less make any recommendations.

44. Section 8.01 of the Code of Ethics states, "Psychologists have an obligation to be familiar with this Ethics Code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of an ethical standard is not itself a defense to a charge of unethical conduct." As self evident fact as any legal or moral system, that Dr. Berrill can not absolve himself by ingnorance and that deviation from these codes is certainly activity proscribed by 42 USC 5106a and other statutes.

45. IN SUM: as Dr. Berrill did not audio or video tape the interviews with the children and/or Mazal Zirkind, all his statements in his report are heresay and totally uncorroborated; and as Dr. Berrill admits to never having met the plaintiff, yet Dr. Berrill came to a conclusion (that the plaintiff should not be allowed to see his children except under supervision) **THIS IS MALPRACTICE AND PUNISHABLE UNDER THE LAW!**

CASE REBUTTALS

46) All cases cited by this defendant that are rebutted in other papers, pleadings, etc. apply to this defendant as well.
47) The defendant(s) advance Brown v. Duggan, 329 F. Supp. 207; as a precedant that no matter what kind of false reports the defendants filed and whether or not the defendant(s) accepted bribes to do so, no matter from whom those bribes came from, the defendants are immune from prosecution. This is not true and Brown v. Duggan is not congruous to the instant case:

A. In Brown v. Duggan no facts were cited, the plaintiff in the instant case cited facts.

B. In Brown v. Duggan there were no facts indicating conspiracy, the plaintiff in the instant case has submitted letters and other documents.

C. In Brown v. Duggan discrimination is not documented, the plaintiff in the instant case has documented disrimination with government reports.

48) In regards to the complaint in Brown v. Duggan being dismissed due to the lack of facts and only conclusory allegations of conspiracy; just because one lawsuit is dimissed due to lack of facts does not mean that every 42 USC 1983 action should be dismissed due to lack of fact. The defendants have failed to refute the facts advanced by the plaintiff, especially the facts substantiating conspiracy (i) the letter from Hershel Kurzrock and the Rabbinical Alliance of America (ii) Mendel Epstein's membership in the Rabbinical Alliance of America (iii) Mendel Epstein's founding of Agunah Inc. (iv) Mazal Zirkind's communication with Hershel Kurzrock, Mendel Epstein and Rivke Haut (v) Rivke Haut's position with Agunah Inc. (vi) the allegation that based upon information and belief that Rivke Haut has been giving Dr. Berrill funds from Agunah Inc. (vii) New York State and federal government reports documenting a policy of New York State discirmination (viii) witnessed ex-parte communications with the judge(s) involved in the family court case and (ix) witnessed proscribed, illegal co-counseling among the defendants.
49) What is relevant from Brown v. Duggan is that 18 USC

241 and 242 would not apply to the defendants as the plaintiff has not filed and/or followed the proper procedure for a pre-arrest complaint from which a criminal warrant or summons should issue. Furthermore, it is relevant that from Brown v. Duggan that court stated that illegal activity should be referred to the US Attorney for criminal prosecution. While New York State courts refused to even entertain the idea, this court should be taking such action against the defendants. Furthermore, the defendant took such action and the US Attorney's office responded in the affirmative (Exhibit 4, Complaint).

50) The defendant(s) advance Slotnick v. Garfinkle, 632 F. 2d 163; as precedant that conclusory allegations are insufficient to pass muster for a 42 USC 1983 action. This unsubstantiated statement on the part of the defendant(s) in light of all the above mentioned documents and material fact and facts that have to be substantiated by discovery, does not hold water and has no legal bearing on the instant case. Qualified immunity is a matter that must proven at trial. The officials intent must be clearly defined as having acted in good faith. As the court in Slotnick citing Imbler v. Pachtman stated, "The fate of an official with qualified immunity depends upon the circumstances and motivations of his actions, **as established by the evidence at trial**." Imbler v. Pachtman, 424 U.S. 409, 419 n.13, 96 S. Ct. 984, 989, 47 L. Ed. 2d 128 (1976). Simpy put, the defendants will have to answer the charges that they acted with bad faith and submit to subpeona power to disclose evidence that will prove such.

51) The defendants advance Betty Banks v. Harvey, 949 F. 2d 1127; as precedant that the defendants are not state actors and/or their actions were not a deprivation of constitutional rights. This is simply not true. Betty Banks v. Harvey is not congruous with the instant case as it deals with a committment case to a state mental facility which entailed various liberty interests; whether or not those liberty interests were deemed liberty interests by the court is irrelevant THE ISSUE OF PARENTAL RIGHTS IS COMPLETELY ABSENT FROM

THE LIST OF RIGHTS DISCUSSED IN BETTY BANKS V. HARVEY, UNLIKED THE INSTANT CASE; IT IS QUITE OBVIOUS THAT PARENTAL RIGHTS IS THE CENTRAL FOCUS OF THE CASE. **PARENTAL RIGHTS ARE SO SACRED THAT ONLY THE STATE OR A STATE ACTOR CAN DEPRIVE A PERSON OF PARENTAL RIGHTS, AND THEN ONLY BY DUE PROCESS WITH GOOD CAUSE SUCH AS PROVEN, EVIDENCED, SUBSTANTIATED PHYSICAL DANGER TO THE CHILDREN, NOT MYTHICAL, HYPOTHETICAL CONJECTURES. ANY OTHER DEPRIVATION OF PARENTAL RIGHTS IS KIDNAPPING!**

52) In addition, in Betty Banks v. Harvey, there was no charge that the perpetrators communicated ex-parte with the judges involved, and/or that mental health workers made mafia like statements "Don't worry we'll get him", and/or that the mental health workers were part of and/or had ties with and/or were receiving funds from religious cults whose platform was (for congruity sake) the committment of women or wives for some reason. However, in the instant case there is a charge that the perpetrators had communicated ex-parte with the judges which third party witnesses saw; and had made mafia like statements "Don't worry we'll get him"; and have ties as well as receive(s/d) funds from religious cults whose platform (congruously) is the committment of men and the denial of parental rights to fathers and the sentiment that fathers are unnecessary in the lives of children.

53) As parental rights was not an issue in Betty Banks v. Harvey, 42 USC 5106a WHICH PROVIDES FOR THE PROSECUTION OF INDIVIDUALS SUCH AS NAFTALI BERRILL, was not raised as it had no bearing on the case. But, in the instant case it does have a bearing and must be considered as a specific act of Congress forbidding the dismissal of this suit.

54) In regards to Mapleton-Midwood, the facility can not advance the claim that it is not responsible for the actions of

individuals as Charter was in Betty Banks v. Harvey; as Mapleton-Midwood not only has a discriminatory policy but is also enforcing discriminatory state policies.

55) Dr. Berrill can not advance Betty Banks v. Harvey as precedant that he was not a state actor. Infringement upon parental rights as Dr. Berrill did, is a perogative of the state alone and an activity reserved exclusively to the state. Dr. Berrill -- whose report is the only basis for judge Segal's actions -- certainly aided and abetted an action against the plaintiff that could only be perpetrated by the state.

56) Unlike Betty Banks v. Harvey, where the court stated that "Mrs. Harvey cannot seriously allege that the "relevant provisions of the Mental Health Code were enacted because the state wants to encourage commitments."; in the instant case it is clear that the state of New York has a discriminatory policy in place and that the state of New York has many vested financial gains and interests by abusing the process to unconstitutionally enforce these unconstitutional policies. (Complaint, Exhibit 16; Opposition to State, Exhibit 2, 5 , 26, 27, & 28)

57) What Betty Banks v. Harvey does set as precedant is, that an individual such as Dr. Berrill, who had ex-parte communications with the judge, is chargeable under 42 USC 1983 as "private parties conspiring with the judge were acting under color of state law; and it is of no consequence that the judge himself is immune".

58) The defendant(s) advance Studifin v. NYCPD, 728 F. Supp. 990; as precedant that conclusory allegations alone should require the instant case to fail; that there is no discrimination in the instant case; and as a private individual, Dr. Berrill can not be sued. Most importantly, as Studifin had a trial and the plaintiff in the instant case never had a trial, there is no comparison between Studifin and the instant case.

59) That would be well, if the allegations in the instant lawsuit were conclusory, but they are not. The court in Studifin defined conclusory as lacking time, place, persons, dates, etc:

"Plaintiff's one-sentence allegation of conspiracy, without supporting facts or specification of time, place, persons, and dates pertaining to the alleged conspiracy, fails to charge a conspiracy with sufficient particularity to make out a section 1983 claim against this private party." The plaintiff in the instant case has listed specific acts, including the time, date and place of occurrence (Especially, Complaint, Exhibit 14). This can hardly be considered conclusory. The plaintiff has named witnesses that saw these acts. This is hardly conclusory. If the plaintiff in Studifin had no facts, it is no proof that the plaintiff in the instant case has no facts.

60) Likewise, whatever allegations of discrimination made by the plaintiff in Studifin, those allegations do not reach the magnitude of a government policy of discrimination documented by state and federal reports, PARTICULARLY THAT THESE GOVERNMENT REPORTS SUBSTANTIATE A POLICY OF DENIAL OF DUE PROCESS. Although, the plaintiff in the instant case was subjected to a much greater denial of due process than the average reported denial of due process. As the court stated in Studifin, "Plaintiff's final assertion that YMCA brought a black man to the proceeding to avoid the appearance of racial overtones, absent any claim that he was denied a fair trial or otherwise deprived of rights at the time of trial, fails to state an identifiable deprivation or violation of his constitutional rights." As the plaintiff in the instant case was denied a trial altogether, it is clear that there was a derpivation and violation of constitutional rights. It is also totally ludicrious for the defendants to claim, that the defendants would only be guilty if the deprivations were suffered in the context of a trial but as there was no trial the defendants are innocent. Certainly it follows, that anyone -- such as Dr. Berrill -- taking advantage of, using or following a documented state policy of discrimination, is himself discriminating.

61) Furthermore, as the court stated in Studifin, 42 USC 1983 and 1985(3) allow for the prosecution of individuals and

organizations including but not limited to Dr. Berrill and Mapleton-Midwood. "n2 Private individuals and organizations are also subject to liability under @ 1983 where they act under color of state law. See Flagg Brothers, Inc.v. Brooks, 436 U.S. 149, 156, 56 L. Ed. 2d 185, 98 S. Ct. 1729 (1978)." [....] "Unlike section 1983, sections 1981, 1982 and 1985(3) permit actions alleging discriminatory conduct against wholly private individuals and organizations. See Runyon v. McCrary, 427 U.S. 160, 49 L. Ed. 2d 415, 96 S. Ct. 2586 (1976) (@ 1981); Jones v. Alfred H. Mayer Co., 392 U.S. 409, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 (1968) (@ 1982); Griffin v. Breckenridge, 403 U.S. 88, 96-102, 29 L. Ed. 2d 338, 91 S. Ct. 1790 (1971) (@ 1985(3)). To state a claim under these sections, plaintiff must show that a deprivation of his rights occurred as a direct result of his race. n7 [...] n7 Section 1985(3)'s broader scope does not restrict actions to racial discrimination but allows claims for a deprivation based on membership in a particular class of individuals. See United Brotherhood of Carpenters and Joiners v. Scott, 463 U.S. 825, 834-35, 77 L. Ed. 2d 1049, 103 S. Ct. 3352 (1983)." The plaintiff in the instant case has charged 42 USC 1985(3) violations and substantiated them, and is a member of a class. **If women are a class then men are a class; and Hassidic Jews are definitely a class.** In reference to Dr. Berrill, acts of conspiracy have been witnessed: Dr. Berrill's ex-parte communications with the judge.

62) As Dr. Berrill has made a rule 56 motion and this applies to all other defendants as well, it is incumbent upon Dr. Berrill, to prove that the plaintiff's allegations are false. F.R.C.P. 56 (c) "The judgement sought shall be render [...] if any show that there is no genuine issue as to any material fact" and F.R.C.P. 56 (d) "shall if practicable ascertain material facts exist without substantial controversy". Besides protestations of innocence, the defendants' have not refuted any of the plaintiff's facts or removed any controversy.

63) The defendant(s) advance Powers v. Karen, 768 F. Supp.

46; as a precedant that the defendant(s) are entitled to a immunity; a rule 56(c) dismissal; and are otherwise innocent as the defendant(s) were only doing their job. This is not true. Powers v. Karen is uniquely different from the instant case in that the government defendant was a FEDERAL OFFICIAL (an IRS agent). The standards of immunity granted federal officials simply do not apply to Dr. Berrill or the other co-defendants. Therefore, Dr. Berrill is not entitled to -- among other things -- a stringent reading of the plaintiff's complaint. In addition, there is no claim in Powers v. Karen of bad faith or discrimination. Indeed, had the plaintiff in Powers v. Karen alleged bad faith, the court stated the case would have stood and sovereign immunity would have been waived. However, in the instant case there is a claim of bad faith and discrimination. Also, unlike the People v. Karen, 42 USC 5106a provides, that Dr. Berrill does not have immunity from lawsuit.

64) As to the Rule 65(c) claim, the plaintiff advances again, that there are sufficient genuine material issues that warrant a trial and that a jury would concur.

65) The defendant(s) advance Glaros v. Perse, et al., 628 F. 2d 679; 30 Fed. R. serv. 2d (Callaghan) 52; as precedant that because some pro se defendant did not advance facts and/or did not state a constitutional right that was violated and/or had his case dismissed therefore all of the above should automatically apply to the instant case. This is simply not true. It is not enough to state that a plaintiff did not advance facts and/or did not state a constitutional right that was violated and/or that the case should be automatically dismissed. In any event, the plaintiff in the instant case advanced detailed facts as the violation of the US Constitutional Right to Parent and the US Constitutional Right to **DUE PROCESS**; and automatical dismissal is only when there are no facts which the plaintiff advances that could be construed in any shape, manner or form in the pro se plaintiff's favor. The blatant, confessed malpractice of Dr. Berrill and Dr. Berrill's financial

impropriety are more than sufficient grounds for prosecution.

66) In addition, Glaros v. Perse, is not congruous to the instant case in that Glaros did not state an official government policy or substantiating facts to such a policy as the plaintiff in the instant case did. Not only has the plaintiff in the instant case stated official government policies of discrimination and violation of separation of Church and State, but the plaintiff in the instant case documented those claims with government reports. Nor did Glaros state times, dates, places and occurrences of the violations of rights: "n11 Missing were a description of the means used in surveilling and monitoring Glaros, the nature of the alleged intrusion, and in some instances the location and timing of such activities. Not enough was said about the conduct of the defendants Nicholas and Ellis to distinguish their behavior from that of an ordinary nosey neighbor. As with Leonard, there was no outline of how those defendants' conduct violated any of Glaros' constitutional rights." However, the plaintiff in the instant case in accordance with the law did cite specific times, dates, occurrences for which the defendants wish to penalize the plaintiff and request that the lawsuit be dismissed as being to "long winded" because the lawsuit in accordance with F.R.C.P. describes in gory detail a "blow by blow" description of the specific, horrific violations of human rights.

67) In addition, the defendants in Glaros supposedly filed and/or had 'documents' and 'memos' that were incriminating and/or violative of the plaintiff's rights. This is not congruous to Dr. Berrill's admission of clandestinely filing an ex-parte report, predicated upon malpractice as testimony with the family court and filing a copy as an exhibit with this court as well. There is nothing "***supposed***" about Dr. Berrill's report. The same applies to Nicholas Chimenti.

68) In Glaros, the court stated, "n4. We think Glaros' failure to pinpoint a connection between the out-of-state defendants and specific acts in Massachusetts adequately distinguishes this case from Mandelkorn v. Patrick, 359 F. Supp. 692

(D.D.C.1973), on which Glaros relies." However, the court continues with a description of Mandelkorn which is remarkably similar to the instant case and only fortifies the plaintiff's claim that there is a right to sue for deprivation of civil rights under the circumstances of the instant case: "In Mandelkorn, there were not only allegations of a wide-ranging conspiracy **(to convert the plaintiff from adherence to a religious sect)** but also specific allegations that the defendants conspired to commit at least one overt act in the District in furtherance of the conspiracy (the assault, battery and imprisonment of the plaintiff in the District so that he could be taken against his will to Florida). Id. at 694-97 & nn. 4, 5. Likewise, in <=11> Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 151 (D.D.C.1976), also cited by Glaros, there were allegations that out-of-District coconspirators were acting at the behest of superiors in the District." As -- based upon information and belief -- Dr. Berrill has received payments from a radical, subversive, religious cult, Agunah Inc., **WHICH IS A MATTER OF MATERIAL FACT SUBJECT TO DISCOVERY WITH SUBPEONA POWER WHICH MUST OCCUR BEFORE A SUMMARY DISMISSAL CAN BE HAD.** In addition, it is most remarkable that several men whose wives were members of Agunah Inc. and/or were receiving services and/or funds and/or money from Agunah Inc., their husbands were beaten. All this, makes the instant case remarkably similar to Mandelkorn, bolsters the credibility of the instant case, and establishes that the instant case has merit and can not be summarily dismissed.

69) The defendants advance Steven and Margaret Doe v. Hennepin County, 623 F. Supp. 982; as precedant that no matter what kind of affidavits are made by so-called mental health workers, no matter under what set of circumstances, the so-called mental health workers can raise the shield of immunity no matter what heinious crimes against humanity they have wrought under the color of state law. This is simply not true in the United States of America and Doe v. Hennepin

County is not congruous to the instant case:

A. The Does were given an emergency hearing. The plaintiff in the instant case was not given any hearing at all even though a trial is mandatory according to New York State statutory requirements and US Constitutional law.

B. While the Does may have picked a mental health worker from a court proffered list -- albeit under coercion from the court -- there is no such analogy of consent in the instant case.

C. While the Does may not have objected to the appointment of the mental health workers by the court, it is more than obvious that the plaintiff in the instant case not only raised strong objections to the mental health workers in the instant case, but the plaintiff's family therapist went so far as to file serious complaints with the US Attorney concerning the so-called mental health workers proffered by the court. Under these circumstances, can anyone with a brain in his head, assume that Dr. Berrill's or Nick Chimenti's ex-parte apointments were not challenged by the plaintiff? Have the plaintiff's recusal motions filed in family court been destroyed from the record that such a claim can be made?

D. The plaintiff's allegations in the instant case are well documented and not conclusory.

E. As Dr. Berrill's appointment was challenged, his court appointment is against New York State law, especially as there never was any hearing upon the challenge to his appointment: Therefore Dr. Berrill has no immunity.

F. THERE WAS NO CHARGE OF DISCRIMINATION IN DOE V. HENNEPIN. HOWEVER, IN THE INSTANT CASE, DISCRIMINATION AND RELIGIOUS PERSECUTION IS THE GRAVAMEN OF THE COMPLAINT.

G. Unlike Doe v. Hennepin County, in the instant case Dr. Berrill has (a) acted as co-counsel and advocate to the co-defendant Mazal Zirkind and (b) receives funds from the same religious cult, Agunah Inc. that Mazal Zirkind and "her rabbi

Mendel Epstein" are a members of. Dr. Berrill's report is predicated upon medieval act of religious coercion by (ab)use of state police power and not any scientific, ethical or professional standards. As such, Dr. Berrill's report is pure malpractice.

70) Although Doe v. Hennepin was dismissed AND appears to have addressed issues raised by the plaintiff in the instant case, the inference connecting the dismissal to claims asserted is untrue. The issues that (i) the list of court appointed psychologists includes only biased psychologists (ii) that court officials such as law guardians, court appointed psychologists, social workers and so-called mental health facilities perpetuate harassment by lawsuit in false child and sex abuse in order to prevent prosecution and that (iii) so-called consent to psychological evaluation and testing when children are being kidnapped under the color of state law is not coercion, extortion and duress; are raised by the plaintiffs' in Doe v. Hennepin, BUT THOSE ISSUES WERE NEVER DECIDED. "The truth that will grow from the ground" is that all three items are true. Furthermore, as stated by the plaintiff in the Cause of Action, citing Chief Justice Warren in the landmark decision of Miranda v. Arizona, citing Lynumn v. Illinois as precedent, the very threat of having one's custody of one's children taken away, IS COERCION.

71) The defendants cite Williams v. McCausland, 791 F. Supp. 992; as precedent that a claim that does not state facts should be dismissed. Williams v. McCausland is irrelevant for many reasons (i) Williams had a trial, the plaintiff in the instant case did not (ii) Williams is not raising the issue of 42 USC 1983 & 1985(3), Williams raised the issue of 42 USC 2000e-16 and (iii) Williams did not raise the issue of the 14th Amendment, the Civil Rights Act of 1871, and discrimination per se. Most assuredly, just because -- ARGUENDO -- that Williams did not raise any issues of fact does not mean that plaintiff in the instant case did not raise issues of material fact that must be subject to discovery e.g. the bank records of Agunah Inc.

Although there may be some relevance to the concept of the 'Whistle Blower" law, this is not an employment case and political persecution for exposing corruption, bribery and the gross violations of human rights far transcends the "Whistle Blower" laws.

72) The defendant(s) advance, Williams v. Rappeport, 699 F. Supp. 501; as support that (a) a complaint with conclusory allegations should be dismissed, (b) that conclusory collaboration between court officials and court appointed official, confers immunity for any violation of human rights, (c) ex-parte orders are due process, (d) that only a doctor and/or psychiatrist and/or social worker for a public institution may be sued under 42 USC 1983 & 1985(3) but a private psyhciatrist who becomes court appointed -- such as Dr. Berrill -- may not be sued under these statutes, and (e) that allegations of a discriminatory government policy warrant dismissal of the instant case. While some of the above issues are law, they do not relate to facts of the instant case and are therefore irrelevant. Indeed, Williams v. Rappeport -- as almost all the cases cited by the defendants are irrelevant -- **BECAUSE THE PLAINTIFF IN THE INSTANT CASE WAS NEVER GIVEN THE OPPORTUNITY TO HAVE A TRIAL AND WAS TOLD POINT BLANK THAT HE WILL NEVER BE GIVEN THE OPPORTUNITY TO HAVE A TRIAL!!!** This is not democracy. This is not justice. This is nothing more than an abuse of process and plain obvious corruption.

73) Furthermore, Williams v. Rappeport is not congruous to the instant case in that (a) the judge in Williams had jurisdiction while in the instant case family court judges Karen Burstein and Philip Segal had no jurisdiction to make a sum and substance divorce; and deal with any matter of divorce without a referral from state Supreme Court, (b) there was no documentation of discrimination or a state policy of discrimination while in the instant case the plaintiff has presented documented, state and federal government reports clearly indicating discrimination and (c) there was no mention

of violation of separation of Church and State.

74) What Williams v. Rappeport does provide is that: (a) the precedant that the plaintiff in the instant case BY RIGHT, may as per F.R.C.P. 56 submit more documentation to buttress his claims and is hereby doing so and the defedants who have asked for summary dismissal have no grounds to object thereto, (b) the plaintiff may sue the defendants in federal court,

75) In Williams v. Rappeport, "Both defendant doctors later **testified** to the contents of the evaluation report at a custody hearing before Judge North, who then determined to follow their recommendation." This is not true of Nick Chimenti or Naftali Berrill in the instant case. Neither Nick Chimenti nor Naftali Berrill were subjected to the crucible of cross-examination. They did not even testify. Therefore, Nick Chimenti and Naftali Berrill have no immunity and may be sued in the instant case.

76) Although Williams v. Rappeport states: "This case centers on Williams' claim that "Dvoskin and Rappeport somehow reached an understanding and a meeting of the minds with Judge North ... and Joan Turner to deprive the plaintiff of the custody of his child, the right to supervise, protect and care for his child, without due process of law and in violation of his right to equal treatment or equal protection of the law all bottomed upon sexual preference and bias against the male sex in favor of the female sex." In the instant case, the history and public statements of the defendants in and of themselves, proves the corollary claim. And, the alleged payments from Agunah Inc. to Dr. Berrill substantiate the claim as well as government reports submitted.

77) In Williams, "Williams, although given the opportunity, did not submit any further documents in form appropriate under Fed. R. Civ. P. 56. Since documents in addition to pleadings are included in the record in this case, defendants' motion to dismiss is treated as a motion for summary judgment pursuant to Fed. R. Civ. P. 12(b)(6) and 56. For the reasons discussed below, this court concludes that Williams has stated a

cause of action under section 1983 and also section 1985(3), but may not prevail because the two defendant doctors are entitled to absolute immunity." However, the plaintiff in the instant case is submitting further documentation, as well as demands by right that subpeonas be issued to discover matters of material fact incriminating the defendants and proving conspiracy and the right to have witnesses testify to matters of material fact incriminating the defendants.

78) As to the issue of neither Dr. Berrill nor Nick Chimenti having acted under the color of state law, the decision of the court in Williams v. Rappeport was: "The substance of the interviews and analyses by both doctors ultimately was disclosed in court. Accordingly, since Drs. Rappeport and Dvoskin were public employees appointed by the court to assist Judge North, saw their responsibility running to the court and owed no ethical duty to protect the interests of any individual, both defendants acted under color of state law. n4 [...] n4 Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980), cert. denied, 454 U.S. 1141, 71 L. Ed. 2d 293, 102 S. Ct. 999 (1982), upon which defendants rely, is not to the contrary. In Sumpter v. Harper, 683 F.2d 106 (4th Cir. 1982), Judge Bryan noted that Hall stands for the proposition that "a physician, even when acting under court appointment, does not do so 'under color of state law' by merely practicing medicine ... where the only link is a State license to practice." Id. at 108. The physician in Hall apparently was a private psychiatrist appointed by the court to evaluate the plaintiff in connection with his commitment to a state hospital. In this case, the defendants are employed by a public agency. Other cases citing Hall also involve physicians who did not work for a public agency and who did not appear to perform evaluations for the court as a normal part of their practice, as does the medical office for which Drs. Rappeport and Dvoskin work. See, e.g., Anderson v. Glismann, 577 F. Supp. 1506, 1508-09 (D. Colo. 1984); **but see Plain v. Flicker, 645 F. Supp. 898 (D.N.J. 1986), where a private New Jersey physician's certification of commitment of the**

plaintiff to a state hospital -- made pursuant to a state statute requiring certification by a licensed physician -- was considered a state function subjecting the physician to a @ 1983 action." It is clear from this statement by the court in Williams v. Rappeport, that Nick Chimenti who works for a public facility and is wholely funded by the state of New York, which exclusively provides psychological evaluations and supervised visitation for Brooklyn Family court, as per his Motion to Dismiss, HAS NO DEFENSE THAT HE DID NOT ACT UNDER THE COLOR OF STATE LAW. As to Dr. Berrill, Dr. Berrill's unsubstantiated, conclusory assertion that he has a private practice and only "from time to time" provides reports to the family courts is as insufficient a defense as a conclusory allegation of conspiracy. Yet, this would be sufficient to make Dr. Berrill liable under Hall, as per the decision in Williams. Furthermore, the court in Williams v. Rappeport stated in its footnotes (cited above in bold letters), citing Plain v. Flicker, that this legal logic is not without dissent. Plain v. Flicker is certainly congruous to the instant case in that Dr. Berrill's report was used as the exclusive support for Judge Segal's decision and the admant stand of the court's refusal to afford the plaintiff a trial and allow the plaintiff to submit irrefutable, documented, subpeonaed, physical evidence that clearly proves that Mazal Zirkind's family court petition was nothing more than perjury and fraud. It is clear that Dr. Berrill's report was necessary for the courts kidnapping of the plaintiff's children under the color of state law. Furthermore, neither Dr. Berrill nor Nick Chimenti appeared in court and defended their reports under oath in the instant case, as occurred in Williams v. Rappeport. Let Dr. Berrill evidence his statement for which he has advanced not one peice of evidence! Furthermore, as per all the above explanations of malpractice, connections with subversive religious cults, discriminatory public policy, and aiding and abetting discriminatory public policy; Dr. Berrill can not argue that he is not acting under the color of state law.

79) As to the issue of termination or infringement of parental rights being a violation of civil rights that one can sue for, the court in Williams v. Rappeport stated: "Count Five of the Amended Complaint, titled "Violation of Civil Rights," seems to assert that defendants deprived Williams of his liberty interest in rearing his child. [...] The Constitution imposes limitations on government action with respect to certain private family decisions, such as those relating to contraception, Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965), sending one's children to religious or public school, Pierce v. Society of Sisters, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), and guiding the development of and retaining the custody and companionship of the child, Lassiter v. Dep't of Social Services, 452 U.S. 18, 68 L. Ed. 2d 640, 101 S. Ct. 2153 (1981). **When a state seeks to affect the relationship of parent and child in furtherance of a legitimate state interest, a fundamental constitutional right is implicated. See, e.g., Santosky v. Kramer, 455 U.S. 745, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (termination of the rights of parents with respect to their natural children);** Little v. Streater, 452 U.S. 1, 68 L. Ed. 2d 627, 101 S. Ct. 2202 (1981) (determining paternity); Stanley v. Illinois, 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972) (determining whether an unwed father may retain custody of his children after their mother's death); Trujillo v. Board of County Commissioners of the County of Santa Fe, 768 F.2d 1186 (10th Cir. 1985) (mother and daughter could bring a @ 1983 action arising out of the death of their son and brother on the basis that the mother and sister had an interest in continued intimate association with their son and brother); **Kelson v. City of Springfield, 767 F.2d 651, 653-54 (9th Cir. 1985) (parents possess a constitutionally protected liberty interest in continued association with their children).** ***While the outer boundaries of the right to rear one's child are not clear, particularly when a parent's rights have not been completely terminated, WILLIAMS HAS ALLEGED A VIOLATION***

***OF A LIBERTY INTEREST SUFFICIENT TO WITHSTAND DEFENDANTS' PENDING MOTION.*"** The court should note that in the instant case, the plaintiff's parental rights have been terminated! **ALL WILLIAMS V. RAPPEPORT DOES, IS BUTTRESS THE PLAINTIFF'S CLAIM, THAT HE HAS A CONSTITUTIONALLY PROTECTED RIGHT TO PARENT THAT HAS BEEN INFRINGED UPON WITHOUT DUE PROCESS AND THAT THE PLAINTIFF HAS THE RIGHT TO SUE FOR SUCH VIOLATION OF HIS FEDERALLY PROTECTED RIGHTS.**

80) As to the issue of discrimination and can one discriminate against men, the court in Williams v. Rappeport stated: "Whether conspiracies motivated by sex discrimination are actionable under section 1985(3) has not been addressed by the Supreme Court or the Fourth Circuit. However, the Third and Fifth Circuits have concluded that sex discrimination is within the reach of section 1985(3). In Novotny v. Great American Federal Savings and Loan Ass'n, 584 F.2d 1235 (3rd Cir. 1978), vacated on other grounds, 442 U.S. 366, 60 L. Ed. 2d 957, 99 S. Ct. 2345 (1979), Judge Adams wrote: 'The principle that individuals should not be discriminated against on the basis of traits for which they bear no responsibility makes discrimination against individuals on the basis of immutable characteristics repugnant to our system. The fact that a person bears no responsibility for gender, combined with the pervasive discrimination practiced against women, and the emerging rejection of sexual stereotyping as incompatible with our ideals of equality convince us that whatever the outer boundaries of the concept, an animus directed against women includes the elements of a "class-based invidiously discriminatory" motivation.' [...] Id. at 1243 (footnotes omitted). Although Judge Adam's decision in Novotny was vacated on other grounds, subsequent Third Circuit cases have treated his holding regarding section 1985(3) as good law. n7 See, e.g., C & K Coal Co. v. United

Mine Workers, 704 F.2d 690, 700 (3d Cir. 1983); Skadegaard v. Farrell, 578 F. Supp. 1209, 1218-19 (D.N.J. 1984). See also Conroy v. Conroy, 575 F.2d 175, 177 (8th Cir. 1978); Tufts v. Bishop, 551 F. Supp. 1048, 1050 (D. Kan. 1982). The Fourth Circuit has also intimated -- but not held -- that sex-based discrimination is actionable under section 1985(3). In Buschi v. Kirven, 775 F.2d 1240 (4th Cir. 1985), Judge Russell wrote: 'To meet the requirement of a class-based discriminatory animus, under this section the class must possess the "discrete, insular and immutable characteristics comparable to those characterizing classes such as race, national origin, and sex." Id. at 1257 (quoting Bellamy v. Mason's Stores, Inc., 368 F. Supp. 1025, 1028 (E.D. Va. 1973), aff'd, 508 F.2d 504 (4th Cir. 1974)). See also Life Insurance Co. of North America v. Reichardt, 591 F.2d 499, 505 (9th Cir. 1979) (women purchasers of insurance meet the @ 1985(3) class requirement). n7 In his dissent in Great American Savings & Loan Ass'n v. Novotny, 442 U.S. 366, 60 L. Ed. 2d 957, 99 S. Ct. 2345 (1975), Justice White noted that the Third Circuit had correctly assumed that section 1985(3) is applicable to sex discrimination. 442 U.S. at 389"

81) It is clear, that to discriminate against a person because of that person's gender is against the law and the very fabric of the United States value system. It is just as wrong to discriminate against men as it is to discriminate against women. "*Sauce for the goose, is sauce for the gander.*" That the state of New York has chosen to deny men their parental rights in a number far exceeding women, in a particular circumstance for no other apparent reason, then the state of New York is guilty of discrimination. And, anyone who aids and abets such action, is also guilty of discrimination. But, the plaintiff avers that part of the reason for the discriminatory policy against men is because more men as fathers are in possession of more funds than women as mothers, and those funds can be confiscated under the color of state law by enforcing discriminatory,

punitive, unconstitutional so-called child support laws in an exorbitant, excessive manner of over-assessment.

82) The defendant(s) cite the case Watterson v. Page which deals with many issues and claims that the plaintiff has raised in the instant case. The plaintiff in the instant case is not appealing the decision in Watterson v. Page but respectfully challenges parts of the court's decision in Watterson v. Page. An in depth discussion is warranted of the issues raised in Watterson v. Page:

(a) The validity of reports of so-called mental health workers.

(b) That there are definite segments of psychology that are pseudo-science.

(c) The subjectiveness of so-called mental health workers who are not professional and scientific do nothing more for society than cause tremendous amounts of grief and mental anguish which only enriches their coffers and perpetuate depression, ill will and bad feelings and emotions.

83) Watterson v. Page is not congruous to the instant case for many reasons: (a) unlike Watterson, the plaintiff in the instant case stated grounds why child abuse could not have happened in the first place: the subpeonaed hospital records from Mount Sinai hospital describing the removal of a three cubic centimeter (3 cm^3) tumor in the spinal cord, not more than six (6) months prior to the Heruclean feat described by the defendant-mother of "throwing me across the room with one hand while throwing my son Malkitzedek across the room with another"; (b) while the victim-parents in Watterson were not charged with child support, the father-victim in the instant case is being charged with child support and unjustified seizure of money is certainly a tangible denial of civil rights; (c) the plaintiff in the instant case has submitted facts; (d) there is no mention of discrimination in Watterson as there is in the instant case; (e) there is no mention of violation of separation of Church and State in Watterson, as there is in the instant case; (f) although the victims in Watterson raised the issue of denial

of due process, they did demand a trial as a matter of right as the plaintiff in the instant case did; (g) nor did the victims in Watterson demand a trial from the very onset of the allegations as the plaintiff in the instant case did; (h) unlike Watterson, the plaintiff in the instant case challenges the very essence of the family laws and their applications as discriminatory, violative of separation of Church and State, whimsical, arbitrary and lacking in due process; and (i) unlike Watterson, the plaintiff in the instant case has documented discrimination by New York state and federal government reports.

84) What Watterson v. Page does do is set the precedent that Dr. Berrill is a state actor acting under the color of state law pursuant to the court order, and that family integrity is a consitutional right and interest.

85) Watterson v. Page also sets the legal precedant that the plaintiff has the right to submit more documentation against the defendants: "Ordinarily, of course, any consideration of documents not attached to the complaint, or not expressly incorporated therein, is forbidden, unless the proceeding is properly converted into one for summary judgment under Rule 56. See Fed. R. Civ. P. 12(b)(6). However, courts have made narrow exceptions for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint. See, e.g., Romani v. Shearson Lehman Hutton, 929 F.2d 875, 879 n.3 (1st Cir. 1991) (considering offering documents submitted by defendants with motion to dismiss claim of securities fraud); Fudge v. Penthouse Int'l, Ltd., 840 F.2d 1012, 1014-15 (1st Cir.) (considering allegedly libelous article submitted by defendants with motion to dismiss), cert. denied, 488 U.S. 821, 102 L. Ed. 2d 42, 109 S. Ct. 65 (1988); Mack v. South Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986) ("On a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary

judgment."); see also In re Wade, 969 F.2d 241, 249 & n.12 (7th Cir. 1992)."

86) The case Watterson v. Page demonstrates why one must very seriously consider the equivalencies between the Salem Witch trials and the so-called child abuse trials. "The petition alleged that the older child was subject to neglect by Valerie Watterson, citing the reports of the Green Acres School officials that the child was describing sexual matters in detail to other children and her teacher, fondling herself and other children, **and complaining about pains in her stomach and lower abdomen**. The petition also alleged that the child wore dirty clothing to school, was unkempt and unwashed, and appeared to be making her own lunch of mayonnaise sandwiches." This complaint of stomach aches by children is the stereo-typical witch hunt complaint. But this is not the only similarity. Based upon the subjective interpretation of the child's testimony by an adult (which will be discussed in detail later), " Seymour with the aid of a sign-language interpreter conducted a total of seven psychotherapy sessions with the child from June 11 to July 22, 1987. On Seymour's initiative, the younger child, then three years old, also attended one of the sessions. On July 24, 1987, Seymour reported her findings in writing to social worker Page, stating that the older child revealed during therapy that her grandmother and mother (appellants Violet Bruillard and Valerie Watterson) repeatedly took the girls against their will to a house where the older child was required to sleep in close proximity with boys and a grown man. On one occasion, one male allegedly fondled the older child. The younger child was allegedly threatened with a large knife and subjected to fondling by a young boy while Valerie and the older child watched. The older child also reported being paid for visiting the house, being told not to reveal the visits to anyone, and eventually being informed by her mother in July 1987 (during the period of the counseling sessions) that she would no longer take the girls to the house." But the fantasies and accusations do not stop there, but continue to grow with the

passage of time as the stereotypical witch trial: "On September 24, 1987, in connection with the proceedings, Seymour swore out an affidavit detailing her findings regarding the two children. In her affidavit, Seymour attested that she believed, based on her weekly psychotherapy sessions with the older child and the single session with the young child, that the children were subjected to some sort of child prostitution/satanic worship activity (involving "the killing of animals and children," "ugly hats (perhaps headdresses) with horns," and "men in robes"), at a location identified by the girls as "Mike Chickering's house." Seymour's affidavit was apparently used by the Merrimack County Sheriff's office to obtain a search warrant for the Chickering house, where the only evidence of child prostitution and satanic worship found by police was a catalog for pornographic films and an ordinary letter opener. On May 25, 1988, after eight days of testimony, the Pittsfield District Court ruled that no evidence supported the allegations of ritual sexual abuse occurring at the Chickering residence and so dismissed those particular charges." Eventually, the witch hunters were forced to "voluntarily withdrew the Abuse and Neglect Petitions before further proceedings were conducted." Why was the abuse and neglect petition removed? Because the horrific allegations of abuse alleged by an UNCERTIFIED psychologist that had cause such grief, deprivations of parental rights as well as disruption and harm to the family, and was proven to be false was the subject of a major attack for violations of civil rights. Only the parent victims were not endowed with millions of tax-payer dollars and state police power to pursue such a course of action! Next time, the state psycho-soldiers should try to accuse O.J. Simpson of sending his children for ritual abuse without any kind of evidence and see what kind of victory the accused could win for deprivation of civil rights!

87) The parallels between the Salem witch trials and today's so-called child abuse trials are apparent to those who look with their eyes. These similarities are discused in Witch Children,

by Hans Sebald; Return to the Furies, by Ralph Underwagner, Salem Revisited by Dr. Richard Gardner and in the periodical Issues in Child Abuse Accusations, by the Institute for Psychological Therapies. Although the plaintiff concedes that there are Satanic and other cults that do abuse children and even most heiniously as child sacrifice, this is not as widespread as believed and the hysteria of child abuse in the numbers reported and accused is unfounded in real facts. Ergo, the massive machinery in place to prevent so-called child abuse is preventing nothing but rather is child abuse in and of itself. **FURTHERMORE, THE PLAINTIFF AVERS THAT THE SAD TRUTH IS THAT THE CHILD ABUSERS, SUCH AS SATANIC AND AGUNAH CULTS HAVE COME TO BE VERY MUCH A PART OF THE SYSTEM OF CHILD PROTECTIVE SERVICES THAT HAS MAYBE THREE TO FIVE PERCENT (3-5%) VALID CASES, AND THE REST OF THE CASES ARE MERELY EXCUSES TO LURE CHILDREN INTO THE EVIL CLUTCHES OF THESE CULTISTS FOR THEIR OWN PURPOSES WHILE CORRUPT PUBLIC OFFICIALS MAKE BILLIONS IN MEDICAID FRAUD, TITLE IV-D FRAUD AND OTHER GOVERNMENT SUBSIDIES! It is obvious that only such cultists and corrupt psychologists and social workers with tremendous implicit as well as explicit financial interests would be involved in damaging the well being of children. And, this is the real crime which not only the State of New York is guilty of, but the Congress of the United States which finances these actions under the Mondale Act without policing the states, and the states' policies is also guilty. And, as such actions destroy the very fabric of society of the US, these actions border on treason (which is a matter for the US attorney to deal with, but for the spirit of the law and the magnitude of the crimes, the plaintiff states the issue here, where it is relelvant).**

88) During the Salem witch trials a handful of girls, after

prodding by some adults, accuse three marginal women in the community of being witches. Later, some 200 more women are jailed after magistrates and powerful farmers see that additional accusations are in their interests. The courts loosen the rules of evidence to permit 'spectre' evidence, including images of people in one's dreams. Today, in family court cases which involve child abuse, heresay testimony is allowed as in the instant case, and all accused are considered guilty until proven innocent as per New York State law, "the petitioner is always believed". In the Salem witch trials, confessions were made after being threatened by Reverand Parrish. In family court, confessions are made after being thrown out of your home and told you will never see your children again as the plaintiff was told many times by his attorneys, and messages from the law guardian and Nick Chimenti to the plaintiff via family members, especially the plaintiff's children.

89) The parallels are apparent: community anxiety, pressure to name names, professionals with a stake in finding witches (child abusers), loose evidentiary rules, extensive evidence of forced confessions, judicial misconduct, accusers are disturbed or angry, the wild stories of the accusers are believed, guilt is presumed, accusations grow with time, the number of witnesses grow with time and there is a stake by prosecutors, courts and government officials in the conviction of the accused.

90) In Salem, the accusers were locked up in close quarters -- log cabins -- for extended periods of time during the harsh winters; and the girls had Puritan fathers imposing a harsh lifestyle. In the instant case, as the stereotypical family/divorce court case, allegations of child abuse or sexual abuse are introduced later as the case should be coming to a close. In the instant case, months after the original family court petition had been filed and the plaintiff had already been denied a trial; Mark Feldman made the **EXTORTIONIST THREAT** that should the accused Mr. Zirkind continue to demand a trial then "we will claim sexual abuse of a child". This clearly

indicates to the plaintiff that although all sorts of detailed wild accusations were made in the original petition, the sexual abuse charge was nothing more then an extra afterthought and an add-on to an already perjurious petition. Furthermore, as cases come to a close, the court's case load lightens and the services of the so-called psychologists and social workers are not necessary. G-d forbid the courts should have a lower case load or a social worker should not have children to see. This would destroy the business of the judiciary and the so-called mental health workers. It is no wonder that so many so-called mental health workers aver that the average American is disturbed and needs help (New York article, below). And, if the average American is not disturbed and does not need help, then the mental health workers can always foment disturbances with family court. It is clear that there would be no need for so many big brother services if there would only be more fathers in the lives of children (Opposition to State, Exhibit 14).

91) Similarly an article, Justice Gone Crazy, Reader's Digest, Jan. 1994, pg 33, discusses a case where Janet Reno prosecuted a teenage boy for sexually abusing little children. The article discusses how the boy was coerced into confessing, illegal search and procedure was done, how the children were 'suggestively questioned' and other denials of due process. The boy was a diabetic but not allowed insulin, food or an attorney while being questioned. The testimony of child witnesses turned with time from sexual abuse to being driven in pick up trucks that flew through the air to unknown destinations. The boy a native of Finland, was living temporarily in the United States while his father worked here on assignment. At the end of his ordeal, the boy stated he had been taught in school that one is innocent until proven guilty, but he had been treated as guilty until proven innocent.

92) Similarly, in the article Salem Revisited, New York, April 12, 1993, pg 10, the story is told of Margaret Kelly Michaels who was accused of child abuse. Again, the children were coerced into making allegations and statements while the

defendant was not allowed to bring any witnesses on her behalf nor was she allowed to cross-examine witnesses and there were other denials of due process. The blatant similarities to the Salem witch trials are there for all those that wish to see.

93) Similarly, in the McMartin preschool case, sexual abuse involved hoaxes, uncollaborated evidence, unprofessional forensic reports of tunnels under the school building that could not be substantiated by valid forensic means, evidence of dead animals as sacrifices, and the planting of evidence.

94) As to the 'sign language interpreter' in Watterson v. Page, it is unclear exactly what the facts are. Arguendo: The child was hearing impaired and communicated with sign language which the UNCERTIFIED psychologist did not know. Therefore, the psychologist needed an interpreter that could speak sign language. If this being the case, the adage "It looses something in the translation" is an understatement. Sign language interpretation in sexual abuse cases is quite similar to facilitated communication in sexaul abuse cases. "Facilitated communication is not purely sign language, but it addresses the problems that arise when a "facilitator" (a kind of interpreter) types responses on a keyboard to "help" an autistic or retarded child to express his/her thoughts. The evidence is that the typed responses entirely reflect the facilitator's views rather than the child's. There have been about 60 legal cases in which caregivers (including parents) have been charged with abuse based on such communications. All but two (2) were termintated at a fairly early stage. The technique is clearly bogus from a scientific point of view, but that has little effect on the practitioners." Ian Maynard Begg, Dept. of Psyhcology, McMaster University, Hamilton, Ontario. An in depth discussion of the subject can be found in A History of Facilitated Communication: Science, Pseudoscience, and Antiscience, by Jacobson, J.W., Mulick, J.A., & Schwartz, A.A., American Psychologist, vol 50, pgs 750-765, 1995.

95) In Watterson, although the issue of absolute immunity being awarded to court appointed psychologists was raised, the

court did not address the issue as the suit was dismissed on other grounds: lack of material evidence to withstand dismissal. However, the court stated: "We need not decide whether the district court correctly held that a court-appointed psychologist is entitled to absolute immunity from claims in connection with her duties as a quasi-judicial officer. Compare Myers v. Morris, 810 F.2d 1437, 1466-67 (8th Cir.) (holding that court-appointed psychologists have absolute immunity), cert. denied, 484 U.S. 828, 98 L. Ed. 2d 58, 108 S. Ct. 97 (1987) with Hodorowski v. Ray, 844 F.2d 1210, 1215-16 (5th Cir. 1988) (refusing to extend absolute immunity to child protective service workers). This is a difficult and, in this circuit, novel question, on which there is no conclusive authority. See Frazier v. Bailey, 957 F.2d 920, 931 n.12 (1st Cir. 1992); see also Snell v. Tunnell, 920 F.2d 673, 686-89 (10th Cir. 1990) (reviewing various court positions on absolute immunity for child abuse investigation participants), cert. denied, 111 S. Ct. 1622, 113 L. Ed. 2d 719 (1991). In Burns v. Reed, 114 L. Ed. 2d 547, 111 S. Ct. 1934 (1991), the Supreme Court cautioned that the "presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties." Id. at 1939. The Court went on to say that it had been "'quite sparing' in [its] recognition of absolute immunity, and [had] refused to extend it any 'further than its justification would warrant.'" Id. (citations omitted). We do not suggest that absolute immunity could not exist for these psychologists in the present circumstances. But since for more conventional reasons appellees are clearly entitled to prevail, we rest our decision exclusively on those reasons." Of course, the plaintiff has advanced and continues to advance, with the above underlined citations as precedants as well as other arguements advanced throughout the plaintiff's papers, that court appointed mental health workers have at best qualified immunty. Arguendo, that the court appointed mental health workers had absolute immunity, their absolute immunity could be no greater than the

judge's absolute immunity which is voided by the charge of discrimination.

96) Unlike Dr. Berrill's claim that the court order for evaluation does not make him a state actor, the court in Watterson made such a determination: "We shall assume that the Pittsfield District Court order for counseling and reporting by Concord Psychological Associates provided a sufficient basis for these private defendants to be acting under color of state law. See Frazier, 957 F.2d at 928; Rodriques v. Furtado, 950 F.2d 805, 813-14 (1st Cir. 1991)."

97) In Watterson, the "Appellants do not allege that the procedures provided under New Hampshire law for child neglect and abuse petitions, concededly followed in this case, are constitutionally inadequate." However, the plaintiff in the instant case alleges that the very essence of New York State family law is unconstitutional, denies due process, is whimsical and arbitrary and otherwise an abomination of judicial procedures.

98) In Watterson, "The only property interest affected was, we infer from the complaint's allegations, the loss of some money and wages to attend the abuse proceedings and to pay an attorney to represent them, neither of which constitutes, standing alone, an unconstitutional deprivation of property." In the instant case, an astronomical amount of funds have already been confiscated from the plaintiff's **wages with more judgements having been punitively enacted since the filing of this Complaint** as well as the impending threat of further assesments and seizures.

99) Unlike Watterson where "n5 Appellants do not allege the absence of grounds for suspecting abuse by someone. They admit that, during visits to her father, the older child witnessed repeated sexual abuse of another child in a manner nearly identical to that described by the older child to Seymour. In addition, appellants admit that the older child was molested at age six by a fellow student during bus rides to school." In the instant case, **the plaintiff has subpeonaed evidence to prove**

that the child abuse allegation could not have happened; there was no admission of child abuse, there is no admission of child abuse and without thumb screws there will be no admission of child abuse by the father.

100) While the court in Watterson stated that parental rights are not absolute, it did state that constitutionally adequate procedures must be followed: "The government has a compelling interest in the welfare of children, and the relationship between parent and child may be investigated and terminated by the state provided **constitutionally adequate procedures are followed**. Santosky v. Kramer, 455 U.S. 745, 766, 769, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982)." **As the state of New York at no time provides constitutional procedures for the investigation or termination of parent-child relationships, THE STATE OF NEW YORK HAS NO LEGAL RIGHT WHAT-SO-EVER TO TERMINATE OR INVESTAGE ANYONE'S PARENT-CHILD RELATIONSHIP.** The instant case is an example par excellance of the total absence of constitutional procedures in the termination of parental rights merely because the judges and court officials are nothing more than anti-Semites, racists, bigots, radical subversive religious cultists and corrupt and/or bribe accepting officials.

101) The court in Watterson stated that reckless interference with the parent-child relationship is grounds for a 42 USC 1983 action, however the court in Watterson did not find any such reckless interference: "While reckless indifference, as opposed to mere negligence, may be actionable under @ 1983, see Torres Ramirez v. Bermudez Garcia, 898 F.2d 224, 227 (1st Cir. 1990), no set of facts alleged in this complaint, or reasonable inferences therefrom, could support a finding of more than simple lack of due care." However, in the instant case, Dr. Berrill's actions had a reckless indifference to the truth as his desire for religious persecution far outweighed his desire to determine if there had been any actual child abuse or not.

Wherefore, the plaintiff, Harlow Zirkind, respectfully requests that this court:

1. Deny the defendant's answer and motion to dismiss and,
2. Issue orders of discovery and subpeonas;
3. Set a tentative trial date OR,
4. In the alternative, convene a trial by jury to determine from testimony of witnesses, the evidence submitted and in the plaintiff's possession, as well as subpeonaed evidence if the circumstances and coincidences cited by the plaintiff warrant a 42 USC 1983 & 1985 action.
5. Any other relief deemed just and proper by the court.

Sworn to and signature executed before me this
19 th day of the month of October, 1995.

_____/s/_____ _____/s/_____

County of

NOTARY

HARLOW ZIRKIND
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

Exhibit 1 - Copy of Berrill's report to Family Court.
Exhibit 2 - Guidelines for Child Custody Evaluations
Exhibit 3 - Code of Conduct

Exhibit 8 – USD 95-CV-931 EDNY, Request for financial disclosure of Agunah Inc. and; motion stating NG Berrill was bribed by Agunah Inc.

Harlow Zirkind
547 Wyndham Road
Teaneck, NJ 07666
August 27, 1996

Honorable Judge Edward R. Korman, USDJ
US District Court
225Cadman Plaza East
CLERK'S OFFICE
Brooklyn, NY 11201

DATE STAMP:

EDNY
SEPT. 23, 1996

RE: 95-CV-931 (ERK-CLP)
Introduction of New Evidence

Dear Hon. Judge Korman:

I hereby respectfully request permission to introduce new evidence. The evidence that I seek to introduce is the financial records of Agunah Inc. and its funders.

Sincerely,

/s/

Harlow Zirkind

cc: Magistrate-Judge Cheryl L. Pollak
cc: Carolyn Cairns Olsn, Assistant Attorney
cc: Brigitte M. Duffy, Assistant Corporation Counsel
cc: Micheal Deveraux, Esq.
cc: Mary E. Pearson, Esq.
cc: Mark A. Feldman, Esq.

cc: Stella Arsenakos, Esq.
cc: Andrew Plasse
cc: Tomas Greenberger, Esq.
cc: Joseph E. Macy, Esq.

[in Judge Korman's handwriting]

The letter is referred to the G.P. my [illegible].
/s/ E.R. Korman, USDJ
9/2/96

[in Magistrate's Pollak's handwriting]
As explained during the conference of July 8, 1996, the Court, in considering motions to dismiss under Fed. R. Civ. P. 12(b)(6) considers only the Complaint and attachments. The Court does not consider additional evidence. Accordingly, the financial records of Agunah, Inc. and its funders will be docketed and filed by the Court for future consideration in future proceedings. So ordered.
/s/
Cheryl Pollak, USMJ 9/25/96

Exhibit 9 – Copy of subpoena issued during the proceedings of NYS Family Court case# O-5998/93; V-8536/93; and V-8537/93 and; Mark A. Feldman's reply that Mr. Feldman had not tampered with said witness.

Family Court of the State of New York
City of New York
County of Kings
----------X
In The Matter of — Docket No. V-5896-7/93
O-5998-93

Mazal Zirkind & Harlow Zirkind — SUBPOENA
----------X

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK

TO: Israel Kleinman aka Sruly Kleinman
East 8th Street, Brooklyn, New York

YOU ARE HEREBY COMMANDED to appear before the Family Court of the State of New York, County of Kings, at 283 Adams St. Brooklyn, J. Burstein, New York, on April 14, 1994 at 9:30 o'clock in the forenoon of said day, as a witness in a proceeding pending before the said court entitled Zirkind v. Zirkind

FOR FAILURE TO ATTEND, you will be liable to FINE AND IMPRISONMENT.

By Order of the Court
/s/
Carol Pascal Zimmerman
Attorney For Harlow Zirkind
645 Madison Avenue, NY
212-759-2400

Dated: April 8, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

Case No. CV95-931 (ERK)

Pro Se

HARLOW ZIRKIND, Plaintiff
-against-
STATE OF NEW YORK, ET. AL., Defendants
----------X

MEMORANDUM OF LAW IN SUPPORT OF A MOTION TO DISMISS THE COMPLAINT AS AGAINST DEFENDANT MARK A. FELDMAN, ESQ.

[page 9, bottom paragraph, continued and finishing on page 10]

"Here, plaintiff fails to set forth any facts which support his conclusory assertion that I took any actions or, in any way, participated in the alleged violation of plaintiff's constitutional rights. The only factual allegation against me is that I am the attorney for his wife and that I represented her in the Family Court and now in the Appellate Division proceedings. Moreover, the complaint fails to demonstrate any "personal involvement" by me in the alleged violation of plaintiff's constitutional rights regarding either a conspiracy or a conspirational act, requisite elements for a conspiracy claim. Powell v. Workmens's Comp. Bd., 327 F.2d 131 2nd Cir. 1964). The only purported actions by me in relationship to the "conspiracy" are knowing, consenting and agreeing with Judge Segal's denial of the plaintiff's motions and other decisions in favor of my client. In other words, I am accused of being a zealous advocate on behalf of my client. **The plaintiff also alleges that i committed documentable obstruction of justice by telling subpeonaed witnesses not**

to appear in court. He fails to state who the witnesses were and to provide documentation in support of his claim. This allegation should be dismissed as baseless." [emphasis petitioner's]

Dated: Brooklyn, New York
April 24, 1995

Respectfully submitted,
/s/
Mark A. Feldman, Esq.
(MF 3335)
1717 East 18th Street
Brooklyn, NY 11229
(718) 627-7900

Exhibit 10 – Copy of transcript before Judge Karen Burstein where Mark A. Feldman, Esq. demanded that the court order the petitioner to perform a religious divorce ritual [Complaint, Exhibit 11].

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK: COUNTY OF KINGS

----------X

In the Matter of a Proceeding for the Custody and/or Visitation of Minors Under Article 6 of the Family Court Act
MAUSEL ZIRKIND

.vs.

HARLOW ZIRKIND

Docket No. V5896-7/93

----------X

283 Adams Street
Brooklyn, New York 11201

August 6, 1993 PART-1

BEFORE: HONORABLE KAREN S. BURSTEIN, Judge

APPEARANCES:

Mark A. Feldman, Esq.
4429 18th Avenue
Brooklyn, New York
For Petitioner

Francine Shraga, Esq.
1122 East 13th Street
Brooklyn, New York
For Respondent

Stella Arsenakos, Esq.

26 Court Street
Brooklyn, New York
Law Guardian

Denise Taylor,
Official Court Reporter

PROCEEDINGS

[bottom of page 9 and top of page 10 of the transcript]

MR. FELDMAN: Your Honor, I would also say that, being the parties are obviously just began living separate, apart, my client has repeatedly asked the husband for a Jewish Divorce, again and again, even though there is not a proceeding for such a thing, I would ask that it be brought to the Court's attention the he is holding GET that he consider – prior to the next Court appearance, being able to work this out with my client.

MS. SHRAGA: My client understands that this is not within the Court's jurisdiction. It is an issue before the Court and he is willing to go and has gone to a Jewish Court of Law to deal with this seperation issue, and it shouldn't really be discussed in this form.

MR. FELDMAN: There will maybe another incident of abuse. When we're alleging – when we go to a hearing, I want to point out one extra issue.

Exhibit 11 – Rabbi Herschel Kurzrock's letter to the petitioner demanding that the petitioner submit to arbitration before Mr. Kurzrock [Complaint, Exhibit 12].

Rabbinical Alliance of America
3 West 16th Street
New York City, NY 10011

"HAZMONA – SUMMONS TO DIN TORAH"

Harlow Zirkind
785A East 8th Street
Brooklyn, NY 11230

12/1/92

Mazal Zirkind:

(has) authorized our Rabbinical Court-Beth Din to summon you before our Beth Din to answer claims against you.

As such, the Beth Din of the Rabbinical Alliance summons you with this Hazmona L'Din Torah to appear before our Rabbinical Court for this matter on:

(date) 12/13/92

Brooklyn Office: 305 Church Avenue

/s/
Rabbi Hershel Kurzrock

Rabbinical Alliance of America
3 West 16th Street
New York City, NY 10011

"HAZMONA – SUMMONS TO DIN TORAH"

Harlow Zirkind
785A East 8th Street
Brooklyn, NY 11230

5/17/93

Mazal Zirkind:

(has) authorized our Rabbinical Court-Beth Din to summon you before our Beth Din to answer claims against you.

As such, the Beth Din of the Rabbinical Alliance summons you with this Hazmona L'Din Torah to appear before our Rabbinical Court for this matter on:

(date) 5/23/93

Brooklyn Office: 305 Church Avenue

/s/
Rabbi Hershel Kurzrock

Rabbinical Alliance of America
3 West 16th Street
New York City, NY 10011

"HAZMONA – SUMMONS TO DIN TORAH"

Harlow Zirkind
785A East 8th Street
Brooklyn, NY 11230

6/1/93

Mazal Zirkind:

(has) authorized our Rabbinical Court-Beth Din to summon you before our Beth Din to answer claims against you.

As such, the Beth Din of the Rabbinical Alliance summons you with this Hazmona L'Din Torah to appear before our Rabbinical Court for this matter on:

(date) 6/8/93

Brooklyn Office: 305 Church Avenue

/s/
Rabbi Hershel Kurzrock

Exhibit 12 – Decision NYS Appeal 95-01328, 95-01491, 95-01494, & 95-01497; Published, 630 NY Supp. 2d Series, pg 570

In the matter of Mazal Zirkind, Respondent
v.
Harlow Zirkind, Appellant

Supreme Court, Appellate Division,
Second Department
August 21, 1995

In custody proceeding, following denial of father's motion for recusal of judge, the Family Court, Kings County, Segal, J., denied father visitation or custody and entered protection order directing father not to interfere with mother's custody of children. Father appealed, and the Supreme Court, Appellate Division, held that: (1) family court did not abuse its discretion in denying motions to disqualify Law Guardian and to recuse judge; (2) willful refusal of father to submit to court-ordered psychiatric evaluation was sufficient ground for entry of temporary order denying father custody and visitation; (3) father had waived right to hearing on issue of counsel fees; but (4) order was modified to be effective only for period of one years due to failure to set forth finding of aggravating circumstances.

Affirmed as modified.

Infants 81

Trial court did not abuse its discretion in denying father's motion to disqualify Law Guardian which was brought in connection with custody proceeding where there was no evidence that Law Guardian had conflict of interest or had failed to diligently represent best interests of children.

Divorce 86, 298(1)

Willful refusal of father to submit to court-ordered psychiatric evaluation was sufficient ground for entry of temporary order denying father custody and visitation where there was evidence of verbal and physical abuse by father and that father intended to abduct children and take them to Israel.

Judges 51(4)

Trial court did not abuse its discretion in denying motion of father to disqualify judge in connection with custody proceeding where there was no evidence of bias or prejudice on part of judge.

Divorce 282

Father's right to hearing on issue of counsel fees in connection with divorce and custody proceeding was waived where father failed to request hearing on mother's cross-motion for fees and failed to raise objection to determination of issue on papers.

Divorce 87, 186

Order of protection which denied father right to visitation of children and which stated that it would expire on date over ten years in future could not be effective for more than one year and was modified where order failed to set forth finding of aggravating circumstances. McKinney's Family Court Act 827(a)(vii), 842.

Lawrence H. Bloom, New York City, for appellant.
Mark A. Feldman, Brooklyn, for respondent.

James E. Neuman, New York City, Law Guardian for the children.

Before ROSENBLATT, J.P. and ALTMAN, HART and FRIEDMANN, JJ.

MEMORANDUM BY THE COURT

In a custody/visitation proceeding pursuant to Family Court Act article 6, the father appeals from (1) so much of an order of the Family Court, Kings County (Segal, J.), dated January 10, 1995, as denied his motion to recuse the judge, (2) an order of the same court dated January 10, 1995, which granted the mother's cross motion for counsel fees and disbursements in the sum of $11,464.50 and directed entry of a judgment in that amount, (3) an order of the same court also dated Januar 10, 1995, which granted the petition and awarded the mother custody of the parties' children and denied the father's application for visitation, and (4) an order of protection of the same court also date January 19, 1995, which inter alia, directed the father not to interfere with the mother's custody of the children.

ORDERED that the order of protection dated January 19, 1995, is modified, on the law, by deleting the provision thereof which provides that the order shall expire on March 27, 2006, and substaining therefor a provision that the order shall expire on January 19, 1996; as so modified, the order is affirmed; and it is further,

ORDERED that the order dated January 10, 1995, and the remaining orders dated January 19, 1995, are affirmed; and it is further,

ORDERED that the mother is awarded one bill of costs.

[1] This appeal brings up for review the court's order dated July 21, 1994, which denied the father's motion, inter alia, to disqualify the Law Guardian and to vacate so much of an order of the same court dated August 19, 1993, as, among other things, directed him to submit to an examination by a particular psychiatrist (see, Matter of aho, 39 NY 2d 241, 383 NYS 2d 285, 347 NE 2d 647). There is no evidence in the record that the Law Guardian had a conflict of interest or failed to diligently represent the best interests of the children. Thus, the court did not improvidently exercise its discretion in denying the branch of the father's motion which was to disqualify the Law Guardian (see, Matter of Frederick MM., 201 AD 2d 842, 608 NYS 2d 340).

[2] Upon the facts of this case, the Family Court did not improvidently exercise its discretion in denying the custody and visitation on the ground that he refused to submit to a court-ordered psychiatric evaluation. Under the circumstances herein – which included evidence of verbal and physical abuse by the father as well as evidence that the father intended to abduct the children to Israel – the father's willful refusal to submit to a psychiatric evaluation was sufficient ground for a temporary order granting custody to the mother and denying and denying the father visitation (cf., Waldman v. Waldman, 95 AD 2d 827, 463 NYS 2d 868). We note that the order was without prejudice to his moving for modification of the order upon a showing of his willingness to submit to court-ordered psychiatric evaluation.

[3] There is no evidence of bias or prejudice on the part of the Family Court Judge. Therefore, it was not an improvident exercise of discretion to deny the father's motion to recuse the judge (see, Matter of Emory CC., 199 AD 2d 932, 606 NYS 2d 99; Greenman v. Greenman, 175 AD 2d 360, 572 NYS 2d. 95).

[4] The father failed to request a hearing on the mother's cross motion for counsel fees and he failed to raise an objection to the determination on this issue on the papers. Accordingly, the father waived his rights to a hearing on the issue of counsel fees (see, Rosenberg v. Rosenberg, 155 AD 2d 428, 547 NYS 2d 90; Lynch v. Lynch, 97 AD 2d 814, 468 NYS 2d, 686). The Family Court decision to grant the mother's cross motion for counsel fees in the amount of 411,464.50 is supported by the record and should not be disturbed.

[5] The order of protection dated January 19, 1995, which states that it shall expire on March 27, 2006, fails to set forth a finding of aggravating circumstances. Thus, the order may not be effective for a period in excess of one year, and we hereby modify it to expire on January 19, 1995 (see, Family Court Act 842, 827[a][vii]).

Exhibit 13 – Contempt Motion against M. Ceclia Volk and other defendants, as well as Judge Philip C. Segal, brought before USD 95-CV-931 EDNY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Harlow Zirkind, plaintiff 95-CV-931 (ERK-JLC)

CONTEMPT OF COURT MOTION AGAINST NEW YORK STATE AND MENDEL EPSTEIN, DEFENDANTS; AND MENDEL EPSTEIN'S ATTORNEY TOMAS GREENBERGER

- against -

State of New York, et al.

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1. The plaintiff, Harlow Zirkind, will move this court, before the Honorable Judge Korman, at the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, NY, on the ____ day of the month of _____, 19___, to hold the State of New York, Mendel Epstein and Tomas Greenberger, defendants, in contempt of court, and to request imposing of appropriate sanctions and other measures as justice requires; and for any such further relief as the court may deem just and proper.

2. The State of New York has a history of denials of due process in family court, especially the alteration and/or destruction of transcripts as evidenced by the NYS government report, Exhibit 5 of the Opposition Papers to New York State. This denial of due process (altering and/or destroying court records, especially transcripts) is used to violate the constitutional, civil and human rights of New York State citizens, specifically parents. This modus operandi of New York State by corrupt New York State officials is not limited to trials within New York State court, but whenever aggreived

citizens attempt to sue for deprivations of civil rights in federal court for their civil and human rights secured as federal constitutional rights that New York State has trampled upon; the State of New York proceeds to convince federal court clerks and/or officials to tamper with and/or alter court records, transcripts, etc.

3. This scenario happened not too long ago in the US District Court, Eastern District, before Honorable Judge Magistrate Caden while Magistrate Caden was presiding over the case of Sharon Ruddy-Spendardi v. New York State, The Office of Court Administration, E. Leo Milonas et. al. During Mrs. Spendardi's case, the Pro Se clerk, Cecilia Volk, would not accept Mrs. Spendardi's motions and refused to allow Mrs. Spendardi to file motions. Ms. Volk was reprimanded on the record by Maigistrate Caden for her illegal, unlawful and unconstitutional behaviour. It should be noted now as then, that Ms. Volk had some kind of relationship with E. Leo Milonas, chief administrative judge of the Office of Court Administration.

4. It should be noted in the instant case:

A. The case is being conducted in the U.S. District Court, Eastern District.

B. That E. Leo Milonas is a defendant.

C. That the Office of Court Administration is a defendant.

D. That Cecilia Volk is still a Pro Se clerk.

E. That the state of New York is a defendant.

5. During the instant case, the plaintiff filed many letters and other papers with the court that the plaintiff felt were not reaching their addressees because no answers were forthcoming. Certainly, the plaintiff was not receiving any written answers or orders in the mail, in spite of the fact that according to the computerized docket Judge Korman was issuing orders in response to the plaintiff and that defendants such as Mazal Zirkind were receiving orders (Exhibit 1).

6. Then, on or about August 18, 1995, the plaintiff filed a

Motion for Injunction and served a copy upon the City Corporation Counsel and the State of New York. In addition, on or about August 18, 1995 a cover letter was sent to Mrs. Susi with a self addressed, stamped envelope requesting a copy of the decision. All of the above was done as per Judge Korman's rules. In addition, the Pro Se clerk -- Cecilia Volk -- sent the plaintiff a letter confirming receipt of the motion and stated that the moition had been forwarded to Judge Korman's chambers (Exhibit 2, includes only the front and back of the motion and other documents). The plaintiff maintained this never happened.

7. Subsequently, on or about August 24, 1995 the plaintiff received from the City Corporation Counsel, a letter written to Judge Korman, dated August 24, 1995, acknowledging receipt of the Motion and requesting dismissal of the motion. To which the plaintiff responded to Judge Korman directly on or about August 27, 1995. (Exhibit 3) Proof of mailing has already been submitted to the court.

8. On or about September 1, 1995, the plaintiff received from the Pro Se clerk a letter dated September 1, 1995 acknowledging receipt of the motion. (Exhibit 4). The letter stated that documents (the plaintiff's letter to Judge Korman) had been forwarded to Judge Korman's chambers for consideration. The plaintiff maintains that this never happened.

9. On Oct. 12, 1995, the plaintiff called Judge Korman's case manager, Mrs. PaulaMarie Susi. The plaintiff called Mrs. Susi as per Judge Korman's rules to schedule a hearing date for the outstanding Motion for an Injunction and Stay. Mrs. Susi informed the plaintiff that in spite of the letter that the plaintiff had received from the Pro Se clerk's office, stating that the motion was sent to Judge Korman for consideration, Judge Korman only has Motions to Dismiss before him and Judge Korman does not have this injunction. Mrs. Susi also instructed the plaintiff to resubmit the Injunction to Magistrate Caden directly, not to call the Pro Se

clerk's office because the Pro Se clerk's office will only refer the plaintiff back to Mrs. Susi, and that the plaintiff may mail another copy of the motion and a letter confirming the Oct. 12, 1995 telephone conversation to Mrs. Susi. The plaintiff did so (Exhibit 5) and by the lack of signatures on the return cards (Exhibit 6), the plaintiff maintains that neither Magistrate Caden nor Mrs. Susi received the copies of the injunctions. Therefore, the plaintiff then mailed to Judge Korman directly, another copy of the injunction, with copies of previous letters concerning the injunction and a new letter concerning the fact that all the filings of the injunction could not be found and other matters of misfiling that were too coincidental and consistent to be accidents and mistakes but rather premeditated tampering of court records (Exhibit 7 -- copy of 'new' letter). The plaintiff maintains that Judge Korman never received this letter when it was originally mailed to Judge Korman. Judge Korman may have received a copy latter or the original long after the the original had been received by the clerks, but Judge Korman did not receive the original letter when the original letter was received by the court.

10. Thereupon, and based upon other information and belief, the plaintiff took extreme action and discussed the matter with the US Attorney's office that the plaintiff had good cause to believe that there was tampering with the court records and the filing of the plaintiff's motions. The US Attorney's office referred the plaintiff to the FBI and Mr. James Giokas, Chief Deputy Clerk.for the US District Court, Eastern District. The US Attorney's office described Mr. Giokas as reliable and assured the plaintiff that Mr. Giokas would be able to assist the plaintiff in the filing of the plaintiff's motions. The plaintiff did as instructed by the US Attorney's office (Exhibit 8). Mr. Giokas did receive the plaintiff's injunction and letters, docketed the injunction and letters; and properly forwarded the letters and injunction to chambers. And, Judge Korman referred the injunction to

Magistrate Pollak for preliminary consideration. All of sudden, as if by magic, all the other copies sent by the plaintiff to the court appeared in the file!

11. Concurrently, the plaintiff received a document in relation to the instant case with a supposed signature of Judge Korman. Perhaps the defendants were unaware that the plaintiff was already in possession of Judge Korman's signature from an order issued by Judge Korman granting Mazal Zirkind the assignment of counsel (Exhibit 1). The plaintiff had been served with a copy of this order. The signatures did not match. Coupled with other information and belief, the plaintiff has good cause to believe that this document has a forged signature of Judge Korman.

12. It must be noted that the injuncition being discussed (Exhibit 2) is as unique as the instant case. The injunction being discussed, for the first time in the history of the United States, not only states that fathers are being discriminated against and denied due process in family and divorce court, but substantiates that claim with government reports that must be taken as irrefutable fact by the District court pursuant to Federal Rules of Evidence 201. The plaintiff maintains that the State of New York understood this and all its ramifications, as well as the fact that the abject denials of due process suffered by the plaintiff are obvious and can also be evidenced by exhibits of which the court must take judicial notice; and that the State of New York, instead of confessing to its guilt and making amends for its crimes against humanity, instead attempted to illegally squash justice in the instant case as the State of New York attempted to squash justice in the case of Sharon Ruddy-Spendardi. The attempted tampering of records and the denial of due process by the defendants is not without precedant.

13. Furthermore, the court should note, that Tomas Greenberger, the attorney for Mendel Epstein, seems to be able to violate US Postal regulations without a problem. Although, the plaintiff has been serving Mr. Greenberger by

restricted delivery only, examination of the return reciepts clearly indicates that oftentimes, someone other than Mr. Greenberger signs for his parcels (Exhibit 9). Restricted delivery requires that only the recipient sign for the parcel.

14. In addition, the plaintiff no longer believes it is coincidental that E. Leo Milonas; Mendel Epstein; Bernadette Cadore, the representative of the Dept. of Social Services; and Micheal Infranco, the Deputy Commissioner of the Office of Child Support; **ALL DODGED SERVICE OF THE COMPLAINT AND HAD TO BE PERSONALLY SERVED BY THE MARSHALS (EXHIBIT 10)!** Likewise, E. Leo Milonas could not be located when the marshals attempted to serve Mr. Milonas in the case of Sharon Ruddy-Spendardi. OCA (The Office of Court Administration, lead by Chief Administrative Judge E. Leo Milonas), DSS (Dept. of Social Services, represented by Bernadette Cadore) and SEU (Support Enforcement Unit, lead by Deputy Commissioner Micheal Infranco) all have a very serious stake in this case that massive corruption, gross violations of human and civil rights, and long standing public, governmental policy of following unconstitutional courses of action including but not limited to abuse of process, violations of freedom of religion, violations of separation of Church and State as well as discrimination; stand to be exposed by the presentation of government reports in the instant case. Similarly, the so-called "Rabbi" Mendel Epstein runs the risk of not only being exposed for the racketeer, charlatan and fraud that he is, but also for riding the corrupt tide of E. Leo Milonas and Mr. Milonas's ilk. In addition, Mendel Epstein is now loosing his strangehold of fear upon the Rabbinate and other father-victims similarly situated to the plaintiff as it is public record that the plaintiff is publicly stating what Mendel Epstein really is, as well as suing Mendel Epstein for the crimes and violations of human rights by Mendel Epstein, and the plaintiff has already demanded financial disclosure of

Mendel Epstein's cultist organization -- Agunah Inc. -- which is abusing their tax exempt status to raise funds to use for bribes of court personnel to fix cases for Mendel Epstein's cultists. Furthermore, in spite of the plaintiff's action against Mendel Epstein, the plaintiff still walks the streets, has not yet -- Thank G-d -- been falsely arrested, has not yet been "mugged", has not yet been in a "car accident", and/or has not yet "fallen down the stairs". Therefore, those individuals savvy enough, with histories of corruption and unlawfulness -- E. Leo Milonas and Mendel Epstein -- and entreached in financial and powerful positions either attempted to or had their agents attempt to squash the instant case by any means possible: legal or illegal.

15. The court must realize that conspiracy under 42 USC 1985(3) (as stated throughout the plaintiff's papers) does not necessarily mean premeditated or malicious, but even happenstance occurrence. It is most unfortunate that Mazal Zirkind sought the unconstitutional, illegal and lawful aid of the co-defendants. However, she did and she followed their advice and took unconstitutional, illegal and unlawful actions against the plaintiff. Although Mazal Zirkind knows that she did follow an unconstitutional, illegal and unlawful course of action, Mazal Zirkind is not fully cognizant of the ramifications of the unconstitutional portion of her actions. As a matter of fact, most Americans are not cognizant that this commonly followed course of action is unconstitutional. Even so, Mazal Zirkind should not be absolved from those unconstitutional actions which she knowing committed and is accountable therefore: actions especially those criminal acts which she knowingly committed. Nevertheless, Mazal Zirkind should not be held accountable for these inexcusable actions of tampering with court records and the forging of the District Court judge's signature. While the co-defendants that Mazal Zirkind alligned herself with, may stoop to anything, the plaintiff firmly believes that in this particular action, Mazal Zirkind was totally unaware and uninvolved in

the matter and should not be held accountable therefore.

16. For this hearing to be properly conducted, the presence of the Pro Se clerks Cecilia Volk and Aliza Silber is mandatory as well as the presence of Magistrate Caden and Mrs. PaulaMarie Susi, courtroom deputy. In addition, the entire file must be present with a clerk available to pull documents as the plaintiff requests.

17. During the January 4, 1996, status conference before Magistrate Pollak, acts of impropriety including but not limited to tampering with court records and the forging of Judge Korman's signature were raised. The Magistrate heard the issues and the available evidence. The only counsel not present was Stella Arsenakos who was/is out of the country and in Greece at the time. At the initial conference before Magistrate Caden on June 13, 1995, Stella Arsenakos stated that she would be out of the country at this time. In accordance with the law, the Magistrate referred the matter to the distrtict corut judge (Exhibit 11). A contempt of court issue can only be dealt with by a district court judge and not a magistrate. A contempt of court issue germane to the case itself can not be handled by a magistrate but only by a district court judge as per 28 USC 636 (e) (5) "Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court .... A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of". Therefore, this matter must be heard by the district court.

Wherefore, the plaintiff, Harlow Zirkind, respectfully requests that this court:

1. Hold the defendants in contempt of court for attempting to obstruct justice and interfer with the lawful filing of motions and;

2. Fine the defendants ten thousand dollars ($10,000-) and;

3. Order the defendants to reimburse the plaintiff for the cost of this motion including expenses and labor (the loss of potential labor of $50/hr for computer consulting income) and;

4. To strike the defendants motion to dismiss against the injunction dated August 18, 1995, as untimely, because the State's refusal to answer was predicated upon the state's knowledge of the tampering with the court records which were not being forwarded to chambers and;

5. To strike the State's unsigned Memorandum of Law as the deviation and disregard for procedure was predicated upon the State's knowledge of impropriety and tampering of court records and;

6. Any other relief that deems appropriate.

Sworn to and signature executed before me this
31 th day of the month of January, 1996.

_____/s/_____ _____/s/_____

County of HARLOW ZIRKIND
547 Wyndham Road
NOTARY Teaneck, NJ 07666
201-836-7557

Exhibit 14 – Motion to Strike, brought before USD 95-CV-931 EDNY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Harlow Zirkind, plaintiff 95-CV-931 (ERK-JLC)

REPLY, MOTION TO STRIKE AND MOTION IN OPPOSITION OF MOTION TO DISMISS BY DEFENDANTS: STATE OF NEW YORK, NEW YORK STATE OFFICE OF COURT ADMINISTRATION, HON. E. LEO MILONAS, HON. PHILIP C. SEGAL, AND FORMER HON. KAREN S. BURSTEIN; AND CONTEMPT OF COURT MOTION AGAINST PHILIP C. SEGAL, DEFENDANT

- against -

State of New York, et al.

----------X

1. The plaintiff, Harlow Zirkind, will move this court, before the Honorable Judge Korman, at the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, NY, on the ____ day of the month of _____, 19___, dismissing defendants': State of New York, New York State Office of Court Administration, Hon. E. Leo Milonas, Hon. Philip C. Segal, Hon. William Rigler and former Hon. Karen S. Burstein, Motion to Dismiss; ordering discovery; and/or setting of a trial date to determine matters of fact and law in dispute; and for sanctions against Hon. Philip C. Segal, defendant and/or his attorney for fraud and misrepresentation upon this court; and for any such further relief as the court may deem just and proper.

2. The plaintiff hereby reaffirms each and every allegation contained in the Complaint that the defendants acted in concert

with other defendants and including but not limited to: conspired and/or violated the plaintiff's civil rights intentionally and/or for discrimination; and/or made and/or aided and abetted intentionally and/or for discrimination: misrepresentations to, and/or perpetrated frauds upon New York State Courts; and/or denied the plaintiff due process; and/or knowingly aided and abetted malicious prosecutions; and/or developing and instituting discriminatory and prejudiced policies including but not limited to judicial policies (Exhibit 1, 2, 3, 4, 5, 6 & 7); and/or were fully aware of unconstitutional and/or illegal actions of their employees, officials or agents and did nothing to prevent these actions but rather encouraged these actions; and/or abused their PUBLIC POSITIONS, THE COURTROOM, THEIR JUDGESHIPS AND THE PROCESS to persecute and/or discriminate against those of a particular religion (Exhibit 8) and/or sex (Exhibit 2, 3, 4 & 5) and/or creed and/or size; and/or abused the process and/or by means of malicious prosecution had property and moneys confiscated from the plaintiff as well as having his salary garnished to such a large percentage by court order for a substantial time into the future in such a punitive and onerous matter by a government agency notorious for its discriminatory, punitive and non-law abiding method of dealing with people similarly situated to the plaintiff (Exhibit 5), which essentially is indentured servitude and/or slavery from which no known victim has ever received relief or reimbursement for misappropriated funds (Exhibit 9); and that the defendants engage in these malicious prosecutions in order to enrich the state's coffers by creating the fiction of 'absent parents' under the color of state law in order to misappropriate federal government funds as well as create an administrative bureaucracy and justification for their unnecessary taxpayer, paid for, salaried jobs; and/or search and seizure without a warrant; and/or accepting privileged documents obtained by illegal interference with the US mail; and/or imposing exile without cause, without probable cause, without any evidence of any kind and/or without due process;

and/or coercion and extortion under the color of the law; and/or obstruction of persons in free practice of their religion; and/or violation of separation of Church and State (Exhibit 8 & 10); as well as aiding and abetting parental kidnapping by abuse of process which as the defendants are not parents of the children this amounts to aiding and abetting a kidnapping, denial of due process and a malicious prosecution and/or aiding and abetting parental alienation by abuse of process, denial of due process, malicious prosecution and malpractice; as well as inflicting emotional harm upon the defendant and his infant issue: Pesach Hai Shaul and Malkitzedek Zirkind. In addition, the plaintiff will augment and further define those claims with further claims and/or instances within this reply and other papers and pleadings as well as in the memorandum of law to be submitted after all defendants have answered.

3. As to the defendants' claim that the plaintiff fails to state a cause of action against the defendants, this defense is totally and completely ludicrous. This matter will be fully addressed in the memorandum of law and further in this motion. It is sufficient to reiterate the **SINGLE AND SOLITARY ONE SENTENCE-PARAGRAPH** which is the lead sentence and paragraph of paragraph 2 of the Complaint: **"THERE IS NO GREATER DENIAL OF DUE PROCESS THAN TO DENY A TRIAL ALTOGETHER."** The subject matter of the denial is irrelevant whether rape, robbery, murder or termination of parental rights: A trial and/or trial by jury is required and it was denied in its entirety.

4. As to the defendants' claim that the plaintiff's list of crimes committed against him and/or the incidents cited are too long: The defendants violated the plaintiff's civil rights many times in many ways and in various combinations and permutations. A brief statement of the cause of action is stated below which in no way detracts from the detailed description of events in the Complaint or to be submitted in the memorandum of law:

A. The defendants Mazal Zirkind, Mark A. Feldman, Herschel Kurzrock, Mendel Epstein, and The

Rabbinical Alliance of America, conspired to coerce the plaintiff to commit a religious ritual that he does not wish to perform as well as to consent to an unequitable divorce agreement, by initiating and protracting a malicious prosecution predicated on false child and sexual abuse charges (Exhibit 11) and abusing the process which includes but is not limited to New York State Family Court, court appointed mental health facilities and evaluators and other New York State and City government officials and agencies.

B. In addition they acted in this manner for: sexism, sizeism, , Hellenistic Jewish practices and beliefs, greed, corruption, and lying and covering up, the (religious or dogmatic) belief or creed in divorce and marriage, and the creed that divorce is good for children as opposed to the Judeo-Christian belief that divorce is bad for children and the proven sociological studies that divorce is bad for children and not in the children's best interest. (Exhibits 12, 13 & 14).

C. By the above mentioned actions and/or processes, the plaintiff had moneys and property confiscated; was evicted from his home; denied access to his home; and denied access, society and parenting of his children.

D. This conspiracy and violation of civil rights was aided and abetted by Justices Karen S. Burstein, William Rigler and Philip C. Segal who either share the above mentioned beliefs and/or prejudices and/or have a pecuniary interest in such malicious prosecutions. Judges Segal and Rigler outright denied the plaintiff any kind of trial of any kind. Such an action is outright illegal and a gross violation of human and civil rights that should not have to be disputed or argued, except in a kangaroo court as the appellate division of the Second Department of New York State. In addition, the actions of denial of due process by Judges Segal and Rigler served to cover-up the

denials of due process by former Justice Karen S. Burstein. Although, former Justice Karen S. Burstein made many denials of due process as well as needless and arbitrary adjournments designed to subjugate the plaintiff to extortion by the Support Enforcement Unit, under the color of state law; and she violated New York State and US Constitutional law many times, she attempted to give the appearance of affording the plaintiff a trial by beginning a trial approximately eight (8) months after a trial should have been commenced (two (2) months beyond the statutory limitation) as well as issuing orders without due process, cause, probable cause, or evidence; and issued unjustified, emergency ex-parte orders, ex-parte orders; as well as her and her agents telling the plaintiff outright threats of extortion by abuse of process that they made good on.

E. In addition, the defendants pursued an unconstitutional course of action including but not limited to attempting to enforce unconstitutional New York State laws and/or in an unconstitutional manner.

F. In addition, the defendants' have aided and abetted the misappropriation of federal funds and the defamation of the plaintiff.

G. Justices Burstein and Segal exceeded their jurisdiction to attempt to make a divorce in family court and/or deal with a custody/visitation issue pursuant to a divorce case without referral from Supreme Court and/or made a sum and substance divorce in family court which has no jurisdiction to make a divorce at all.

5. The plaintiff is filing In Propria Persona. The plaintiff is not a lawyer or student of United States law. Therefore, in accordance with District court procedure, the plaintiff's Complaint must be liberally construed and if some claim has been stated, no matter how inarticulately, the court should address the matter. Furthermore, if the court sees that the plaintiff has a claim but has not stated the claim in the proper

manner and/or form, in the pursuit of justice, the court should give the plaintiff the proper guidance to present his claim in the proper manner and form. "A federal court should not dismiss a constitutional complaint because it 'seeks one remedy rather than another plainly appropriate'". (Holt Civic Club v. Tuscaloosa, 439 US 60). For brevity's sake, the plaintiff respectfully refers this court to the section of the original complaint, titled IN PROPRIA CONSIDERATIONS, for case citations as precedents and substantiating this claim. In addition, the plaintiff is attempting to proceed in accordance with F.R.C.P. as much as possible, if he does not, he apologizes to the court but requests that in accordance with F.R.C.P. that in the pursuit of justice, the court grant the plaintiff the latitude he deserves as a laymen. The court should note that the plaintiff was a named plaintiff in a similar lawsuit against some of the defendants, in US District Court, Southern District, Justice John E. Sprizzo, case# 94-CV-0023. At the summation at the end of the oral arguments, Justice Sprizzo, suggested and recommended that the plaintiffs sue these defendants individually. As a laymen, the plaintiff can make the best presentation he can muster, however the plaintiff avers that if District Court Judge John E. Sprizzo said that the plaintiff should sue the defendants individually, then there is a way and merit to this lawsuit even if the plaintiff has not stated the proper legal assertion and/or not stated the proper legal assertion in the proper manner. ""A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The mere multiplication of grounds of negligence alleged as causing the same injury does not result in multiplying the causes of action. 'The facts are merely the means, and not the end. They do not constitute the cause of action, but they show its existence by making the wrong

_appear.'" Id., at 321. Baltimore S. S. Co. v. Phillips, 274 U.S. 316." (United Mine Workers Of America v. Gibbs, 383 U.S. 715; 86 S. Ct. 1130; (1966); 16 L Ed. 2d 218; 53 Lab. Cas. (CCH) P11,135; 10 Fed. R. Serv. 2d (Callaghan) 361; 61 L.R.R.M. 2561)

6. To all matters of fact that the defendants state they do not have sufficient knowledge of, and/or did not deny the plaintiff hereby reaffirms his prior statements of fact and in lack of opposition the court should consider that in the plaintiff's favor when making a decision.

7. To all legal conclusions that the defendants deny and/or do not draw conclusions to, the plaintiff reasserts his claims and in absence of opposition to contrary, respectfully asks the court to rule in the plaintiff's favor.

8. That any and all pertinent claims made in any and all other motions, pleadings, papers, etc. to the other defendants apply to these defendants as well.

9. As to the defendants' claim about that the Complaint should be dismissed due to lack of brevity:

A. Pursuant to F.R.C.P. 8(e)(1), "A party may state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable or maritime grounds." and that this rule is in and of itself sufficient defense by the plaintiff against the defendants' claim of lack of brevity.

B. Pursuant to F.R.C.P. 8(f), "All pleadings shall be so constructed as to do substantial justice" and that due to the nature of the case a detailed description of a series of events is necessary to have a full and proper understanding as to how and why the defendants violated the plaintiff's civil rights; and to understand the assertion of conspiracy as well as the unconstitutionality of New York State law and the unconstitutional application of New York State law. In addition, the plaintiff can not assume that the court will know and/or automatically have an understanding of the depth and breadth of the religious issues involved and that a detailed explanation by the plaintiff is required.

C. Pursuant to F.R.C.P. 10(b), "Each claim founded upon a separate transaction or occurrence shall be stated in a separate count...whenever a separation facilitates the clear presentation of the matters set forth." and that the defendants violated the plaintiff's civil rights many times, in many ways, combinations and permutations and that the actions listed in the Complaint is brief in comparison to that which will be born out in trial.

D. Pursuant to F.R.C.P. 10(c), "A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."

E. Pursuant to F.R.C.P. 11(b)(2), "the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;" and that claims required lengthy legal and logical assertions and arguments.

F. Pursuant to F.R.C.P. 11(b)(3), "the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;" and that the exhibits provide the necessary evidentiary support as required by law and the F.R.C.P. In addition, when the plaintiff was a named plaintiff in a class action lawsuit 94-CV-0023 against the same defendants, Judge John E. Sprizzo, US District Court, Southern District, chided the plaintiffs' attorney Donald Dinan, that 'he had not even stated a statistic'. The even implies that the very least Mr. Dinan should have done was to state a statistic and therefore Judge Sprizzo was dismissing the lawsuit without prejudice until such time as backup documentation and other necessary amendments be added. Ergo, backup documentation as the plaintiff has provided in this lawsuit is proper and necessary procedure.

10. As to the defendants' assertion that the Bad Faith Exception to the Younger abstention does not apply, exclusive

of all prior pleadings by the plaintiff in all other motions, complaints, replies, etc. let this court be aware of:

ACTS OF BAD FAITH, CORRUPTION AND IMPROPRIETY

I. Justice Marjorie Fields, chief justice of Bronx family court, is described in detail in the American Bench. This detailed description is an act of her own volition as can be evidenced by other judges such as Karen S. Burstein, who in spite of her legal and public career, has a very brief and limited biography. This description of Justice Fields describes none other than a rabid, radical, subversive feminist. Page after page, describes Justice Fields', radical feminist and anti-man, propaganda, writings, lectures and actions. It is no wonder that in the first ten years of her reign as the one and only judge in Bronx family court that she convicted ten thousand (10,000) men and based upon information and belief never found a man innocent. One must also put the ten thousand (10,000) convictions into perspective. Assuming these convictions were the only cases she tried: ten thousand (10,000) convictions over a period of ten (10) years equal one thousand (1,000) convictions per year. There are two hundred-fifty court days per year. One thousand (1,000) convictions divided by two hundred fifty (250) court days equals four (4) convictions per day. There are seven (7) hours per court day. Divide seven (7) hours by four (4) convictions per day and the result is one and three quarters (1 3/4) hours per trial of child abuse and termination of parental rights resulting in a conviction. Justice Fields can not be construed as anything but a sexist bigot. In plain English, she is a femo-nazi. How does such an obviously discriminatory judge as she, still occupy the bench in family court in spite of her blatant and outspoken discrimination and abuse of process? How can New York State claim that the Bad Faith Exception does not apply to New York State?

II. Justice Cira Martinez of Brooklyn family court, who can barely speak English, absolutely and viciously denied due process to fifteen (15) fathers, members of Fathers Rights

Metro, and more that we know of; had a Fathers' Rights Metro attorney literally carried out of the court room by 4 court officers for objecting to her initiating a trial without the client being present; and the client was in transit; and it is PROCEDURE in the family courts to wait until 12-1 PM to properly ascertain if a party is not showing up, especially considering the long lines and waiting periods for us commoners to enter the building.

III. Dr. Amy Neustein's case as described in detail in paragraph 18 of the plaintiff's Reply to the defendant, Stella Arsenakos. The court should note that Dr. Neustein's case was the catalyst for 42 USC 5106a and the Child Abuse and Neglect Accountability Act of 1993.

IV. (a) Victim Services is an agency that has been awarded a contract by Chief Justice of the Court of Appeals of New York State, and the Office of Court Administration (Exhibit 5 of the plaintiff's Reply to the defendant, Stella Arsenakos). This agency discriminates against men, and fathers (Exhibit 3 of the plaintiff's Reply to the defendant, Stella Arsenakos). Based upon information and belief, this agency has been sued over two hundred fifty (250) times for violations of human and civil rights, especially but not limited to kidnapping under the color of the law especially by fixing custody trials with false and manufactured evidence as well as having their so-called experts testify ad verecundiam. Victim Services was freed from conviction by tricks of law and not by being absolved of their guilt and that this state funded agency is run by another corrupt clergymen similar to Mendel Epstein. In sum and substance, Victim Services has never denied inhuman actions and kidnapping under color of state, they just 'got off the hook' by 'tricks of law'. **HAD THOSE PLAINTIFFS HAD BILLIONS OF DOLLARS OF FEDERAL AID, PERHAPS THEY COULD HAVE AFFORDED ATTORNEYS – GOOD ATTORNEYS – AND 'NAILED VICTIM SERVICES TO THE WALL.'** In addition, there is no publicly known complaint process for

claims against Victim Services or its workers Exhibit 15.

(b) It is exactly these denials of redress in any court, certainly not in New York State court because there is no known undismissed case, let alone a victory for any parent in state court and not in federal court because hitherto the corrupt judges and their agents scream and pervert the Eleventh Amendment and Younger Abstention into the G-d doctrine which most victims do not know how to defeat. Many victims like myself feel that the federal courts are fully aware of the grotesque inhumane injustices in family courts and that the federal courts know that given the circumstances there is one hundred percent (100%) justification for federal intervention, and that corrupt agencies and state officials fear with great trepidation that if one day should one case ever go to trial in federal court then the floodgates will open for millions more such cases. These kidnappers and extortionists under the color of state law, hope and pray that the District Courts will act like ostriches with their heads in the sand with their eyes closed, and pretend that there is no tyranny of government that is getting greater and greater and more and more oppressive for which there is no recourse in state or federal court. **"Can a court be blind to what must be necessarily known to every intelligent person in the State?" (Kow v. Nunan, 5 Sawyer 532; Sparrow v. Strong, 3 Wall 97; Brown v. Piper, 91 US 37)**

(c) This lack of legal recourse is a sanction of tyranny of government. As described by Westlaw, Trial By Jury, was instituted to prevent a tyranny of government. The lack of trial by jury in New York State family court even though the US and New York State constitution require it for (i) the termination of a human, G-d given and constitutional right to parenthood and (ii) for being charged with a great and infamous crime (Complaint, section: Other Legal Considerations) can only cause insurrection, suicides and infanticides that have become periodic occurrences in the contemporary American news. It takes great moral and

emotional strength not to succumb to take these actions. "Whereas people need courts for redress in order not to resort to violence", UN Declaration of Human Rights. The plaintiff sincerely feels that the District Court has the obligation and duty to hear and try this case. "For if it were not for the fear of the rule of government, man would swallow his fellow man alive", (Rabbi Chanina, Mishnah Avot, Chap. 3).

(d) Furthermore, as in the case of Ankerbarndt; Kimberly Moody vs. New York State, May 1994; and Barbara Tulley of Nevada (ALL women) the federal courts did intervene and these bigots that have seized control of the state courts and judiciary, hope and pray that their propaganda can now permeate (as it obviously has already begun to, in regards to the Draconian orders of protection and extortionery so-called child support orders) and sway the federal courts to also be sexist and discriminatory by allowing only women relief in federal courts for matters that pertain to custody/visitation and child support; and not men.

V. The actions of the New York State family courts are inherently sexist and discriminatory against fathers. This can be evidenced by careful statistical analysis of certain New York State reports (Exhibit 2) that are produced in accordance with federal statute in comparison (Exhibit 4) with statistics produced by the US Census Bureau (Exhibit 3) and the national Centers for Disease Control (Exhibit 3). Even though the State of New York and the family courts abuse the law of the "confidentiality of the children" as a smoke screen and McCarthyist and Stalinistic measure to hide corruption, fixing trials, manufacturing evidence, absconding with federal funds, thievery, kidnapping under the color of state law, prejudice, discrimination, bigotry and other violations of civil rights, the New York State Compendium of Child Support which is produced on a yearly basis, shows that New York State is only awarding 3.6% of child support awards to fathers. Conversely, consistently, every year 96.4% of ALL child support awards are to women, which also means that 96.4% of ALL custody

awards are to mothers, which means that 96.4% of all fathers are crazy, drug addicts, disabled or otherwise unfit parents. For all intents and purposes, the State of New York awards mother custody 100% of the time. Three point six percent (3.6%) is so insignificant as to not be considered. In addition, this is a full two-thirds (2/3) below the national statistic as reported by the US Census Bureau and the national Centers for Disease Control (Exhibit 3). Such statistical analysis is proper and valid statistical analysis for circumventing 'privileged' information. Data(base) analysis is the plaintiff's field and he is duly qualified to make this statement. In addition, according to the national Centers for Disease Control, New York State is awarding maternal custody approximately ninety percent (90%) of the time; is twenty percent (20%) more than the national average of a seventy-two (72%) maternal custoday award rate. Furthermore, if -- as New York State law provides -- there is no prima facie to right custody, then ninty-six point four percent (96.4%) maternal custody can not be considered by any stretch of the imagination as 'no prima facie right to custody'.

VI. As reported in the New York Times, New York State, especially within the five (5) boros of New York City, is employing dysfunctional and corrupt attorneys such as Stella Arsenakos as 18B panel attorneys. What is the state doing about this?

VII. Considering the serious and documented claims of corruption made by the plaintiff, why is not the attorney general's office investigating these alleged corrupt judges instead of defending them? By right, the defendants should be ordered to reimburse the taxpayers for abusing the Attorney's General office, time and services for defending corrupt public officials.

VIII. The defendants did not deny that Brooklyn family court has a 100% conviction rate and is a Star Chamber. How then does the Bad Faith Doctrine not apply? How then can there be any recourse in New York State courts?

IX. Appellate intervention after this lawsuit was filed is no proof of recourse in state courts and that there is no Bad Faith. Prior to this filing there were so many denials of due process for the plaintiff and anyone associated with him to fairly assume that denial of due process is procedure in Brooklyn family court, New York State Supreme court and the Appellate division. Any positive and proper action taken by the Appellate Division **NOW, ONLY AFTER THE PLAINTIFF HAS FILED IN FEDERAL COURT AGAINST NEW YORK STATE FOR CIVIL RIGHTS VIOLATIONS,** is just a further attempt at covering-up grotesque violations and denial of due process. The only time the New York State courts pretended to be courts was:

(i) When as a named plaintiff in 94-CV-0023 (JES), the plaintiff's FEDERAL CASE CAME BEFORE FEDERAL JUDGE JOHN E. SPRIZZO, only then did Justice Burstein begin a trial after approximately more than a dozen denials of hearings and trials for approximately eight (8) months and having blatantly denied due process and violated New York State law by extending a temporary order of protection beyond the statutory maximum limitation of six (6) months without a trial which is also cruel and inhuman punishment.

(ii) In a totally unprecedented manner, the Appellate Division telephoned the plaintiff's attorney Larry Bloom who is handling the plaintiff's appeal in state court on March 8, 1995 (Exhibit 16), the very same day the plaintiff filed this lawsuit in FEDERAL COURT. The Appellate Division called six (6) times in one (1) day. The subject of those telephone calls were granting the plaintiff a stay for some orders issued by Judge Segal without due process and an immediate schedule for filing of motions so as to expedite the appeal process which normally takes one and a half to three YEARS (1 1/2 - 3 yrs) to take ONLY FOUR (4) MONTHS (Exhibit 16) which would enable the Appellate Division to render a decision BEFORE this case comes to oral argument and afford the Appellate Division an opportunity to show that the last two (2) appeals

denied which concur with the denial of due process are irrelevant because NOW the Appellate Division has championed the cause of due process, albeit out of abject fear of EXPOSURE TO THE PUBLIC OF THEIR GROSS DENIAL OF DUE PROCESS, CORRUPTION AND DRACONIAN KIDNAPPINGS UNDER THE COLOR OF STATE LAW. Furthermore, NOW Chief Justice Guy Mangano of the Second Department has sat on the plaintiff's case, on almost every motion, since this FEDERAL CASE has been filed and has attempted to insure that no feminists, lesbians or other known bigots and corrupt judges such as Appellate Division Justice Sondra Miller will sit on this case. Why now? All of a sudden?

(iii) The above incidents clearly delineate to the plaintiff that only federal intervention and the appointment of a master, will ensure a trial, a fair trial and a trial by jury in state court and that the state officials and agencies including Justices Burstein, Segal and Rigler that did act illegally, did deny me due process, did violate my Fourteenth Amendment rights, did exceed their jurisdiction and as such have no protection what-so-ever under the Eleventh Amendment will not be allowed to continue to perpetuate their kidnapping and extortion under state law.

X. There are other state agencies such as the Grievance Committee and the Commission on Judicial Conduct that are total frauds and therefore operate with clandestine procedures as family court does and only cover-up corruption as opposed to their sworn duty to investigate and prosecute corruption. This matter is clearly described in Doris L. Sassower v. Commission on Judicial Conduct of the State of New York (1995), index# 95-109141, New York State Supreme Court, New York County. Therefore, the plaintiff avers that there is no recourse of ANY KIND in New York State: neither in the courtroom nor in any other channel. Virtually all of the plaintiff's complaints to these agencies have gone unanswered.

XI. Let us not forget the recent case of former Justice

Sol Wachtler. What exactly did Sol Wachtler mean by taking away his ex-girlfriend's child? How exactly was Sol Wachtler planning to do this? With the court system? By ordering a child abuse investigation? By having some other corrupt family court judge order a temporary removal from the home for the child's safety with the seal of approval from some state stooge social worker?

XII. Judge Jules Spodek has issued or threatened to issue Contempt of Court orders based upon men not giving their wives a GET as to Michael Hizme (Exhibit 7 & 17), and based upon information and belief, Emerick Frisch and Rabbi Schechet: all of whom, their wives are/were clients of Herschel Kurzrock and/or Mendel Epstein.

XIII. Dr. Yale I. Post of the board of directors of Ohel's Children Home -- where the defendants attempted to conduct 'supervised' visitation -- is on the advisory board of GET Inc. which is dedicated to making divorces and other Hellenistic pursuits (Exhibits 18 & 21).

XIV. Ameena Mannan, a religious Moslem and black woman, had her child taken away from her by the Child Welfare Administration for no documentable reason. Brooklyn Family court aided and abetted the coverup of the grotesque violations of human and civil rights by CWA and the courts themselves. At one point during the trial, the Brooklyn Family Court judge went off the record and told the mother, Ameena Mannan, that: "No black woman is going to tell me what to do." As Ameena Mannan is dead, this statement of hers, printed in the newspaper (Exhibit 10) must be accepted as testimony pursuant to Federal Rules of Evidence 804 (a) (4). In addition, Ameena Mannan's child was not only unlawfully taken from her mother but also in derogation of New York State law was being brought up in a licentious manner contradictory to Ameena Mannan's religion. Religion and abstenance will do much more to prevent teenage pregnancy, the spread of venerial diseases and AIDS, than CWA's foster care and distributing condoms to teenage children.

XV. Judge David R. Freundlich still sits on the bench even though allegations have been made that he is a child abuser/molester (Exhibit 19). For allegations of much less: for undocumented, anonymous, baseless allegations, fathers have had their parental rights terminated. And, based upon information and belief, the Commission on Judicial Conduct and other New York State agencies have made no investigation into the matter.

XVI. Based upon information and belief, the now convicted, former District Attorney of Sullivan counties, Kenneth Gribetz, worked with Mendel Epstein and Yehudah Levin, co-conspirators with Mazal Zirkind, to manipulate the courts to maliciously prosecute and persecute targets of Mendel Epstein's "Agunah" cult.

XVII. That on May 25, 1995, the Brooklyn Bar Association hosted a lawyer's conference -- A Continuing Education Symposium for Law Guardians -- at which Mark A. Feldman was present. At the conference, Saul Edelstein, Esq. stood up and said, "All things being equal, we know the mother gets custody." This statement was totally unobjected to (Exhibit 7).

XVIII. Justice Horowitz, of the 2nd Dept., may he rest in peace, incarcerated litigants for failure to perform the Jewish religious ritual of giving a GET (Exhibit 20). [There is no issue as to this exhibit being privileged information as the privilege is with Mr. Micheal Hizme who willfully gave the plaintiff this documentation, knowing full well that it would be used in this court as an exhibit.] And, as Judge Horowitz is dead, this letter should be accepted as testimony pursuant to Federal Rules of Evidence 804(a)(4). In addition, Justice Horowitz told Michael Hizme in the courtroom during proceedings: "I don't know. Of the last ten (10) cases I've seen. Seven (7) or eight (8) of them were Orthodox Jews. Maybe **YOU PEOPLE** should consider living together before getting married, it might help reduce your divorce rate." (Exhibit 22) (a) Such an anti-semitic, anti-religious remark does not have be tolerated by

MY PEOPLE at all. PERIOD. THIS IS THE SUBSTANCE OF THIS LAWSUIT. (b) The divorce judge is obviously ignorant of the studies that have proven that **HIS PEOPLE** that live together before marriage have no less a divorce rate than **MY PEOPLE** that do not live together before marriage.

XIX. Judge Sara P. Schechter is so notoriously corrupt that she was removed from New York county and sent to Kings county from whence she was removed to Richmond county from whence she was removed and sent back to New York county. And, considering the numerous allegations that she has been (and still is) accepting bribes from drug lords to funnel children to the drug lords by false and rigged adoptions and custody cases, to use as runners in drug operations: **WHY HAS JUSTICE (?) SARA P. SCHECHTER NOT BEEN IMPEACHED?**

XX. As alleged during the Mondrowitz scandal that involved Ohel's Children Home, Ohel was accused of being the hub of an international adoption racket with Brooklyn Family court being the funnel for children to Ohel. Such accusations coupled with the 'magicial', CIA style disappearance of the key defendant around whom the entire prosecution rests, casts great doubts if good faith ever existed in Brooklyn Family court at all.

XXI. Dr. Benjamin Lerner, a former president of GET Inc. -- a Hellenistic organization dedicated to the making of divorces -- is a court appointed psychologist for so-called forensics in FAMILY court and abuses his practice to write false reports against fathers to further his Hellenistic, so-called 'Agunah' beliefs (Exhibit 21). And, based upon information and belief, Dr. Lerner is receiving funds from Agunah Inc., "Rabbi" Mendel Epstein's organization.

XXII. The CSSA Evaluation Project (Exhibit 5) displays prejudice, discrimination, denials of due process, unequal protections under the laws and other improprieties among the support court and the Dept. of Social Services:

(a) That mothers had sole custody in 96% of the family

court cases. Footnote 44 advances as conjecture an undocumented theory, which certainly does not explain the instant case.

(b) That two-thirds (2/3) of the custodial parents (women) did not provide proof of income while only half (1/2) of the non-custodial parents (men) did not provide proof of income. As in the instant case where Harlow Zirkind was asked by the family court to produce a sworn net worth statement, but Mazal Zirkind was never asked by the court to do such a thing; Harlow Zirkind's attorney, Carol Zimmerman, requested that Mazal Zirkind produce income verification and the court never enforced that request.

(c) That two-thirds (2/3) of the AFDC recipients (as the plaintiff's wife-defendant, Mazal Zirkind) do not have proofs of income on file as required by law, as occurred in the instant case.

(d) That most of the financial tracking and prosecution revolves around Title IV-D recipients such as Mazal Zirkind.

(e) That a minimum of eighteen percent (18%) of the records, transcripts are missing or unavailable.

(f) That child support awards are excessive beyond the legal guidelines; putting non-custodial parents (fathers) into poverty; that the lower the income, the greater the deviations from the guidelines and that there is no justification for the deviations from the guidelines.

(g) That the deviations as stated in the report were actually greater, but such cases were excluded from the report as "unique" cases that would have improperly skewed the report.

(h) That the state keeps every penny over fifty dollars ($50-) in child support collected for a Title IV-D case such as Harlow Zirkind's.

XXIII. Based upon information and belief, judges in Sullivan and Rockland counties which have large populations of Hassidic Jews, have told Hassidic Jews in court that "If you tell your daughters that you don't like their clothes, I will hold

you in contempt of court and put you in jail for six (6) months." Allow me to put this statement into perspective. The father being a Hassidic Jew, was exiled from his home by the common, stereotypical, vicious, vindictive woman, that frequents family court. This woman after many years of marriage decided to no longer practice the religion she practiced when she originally married. She was aided and abetted in her new spiritual path by the social workers and psychologists of the taxpayer funded New York State court system who made ad hominem attacks against the father because as the average case in family court has no physical evidence of any kind of abuse, particularly in the cases of Orthodox and Hassidic Jews. This woman proceeded to no longer abide by religious customs and practices including the dressing of her children (we will not discuss the mother's personal dress code) in short skirts, no stockings and/or short socks. The father responded by telling his children during visitation that he did not approve of the way his children were dressing. **The State of New York, has no right to interfere and violate separation of Church and State! Bitter religious controversy is not be brought into the courts in the United States of America!** Furthermore, this father's actions will do much more to prevent teenage pregnancy than the licentious behaviour sanctioned by New York State courts.

XXIV. The police have instructions not to arrest women in domestic disputes or for violations of domestic violence. Sometimes forwarding such banal excuses as the police can not see a raised court seal, so the validity of the order is uncertain. Or, as told to the plaintiff, when he had an order of protection, that he has five (5) minutes to get his things and leave because his wife appears to be violent. What the law really requires is that if my wife appears violent and attempts to assault the police officer or me, then the police who wear guns, clubs, mace and handcuffs USE THEM! Or, as James Creque III, was told in a bluntly, sexist, anti-man, discriminatory statement by the police: "We have orders from on high, not to

arrest women." (Exhibit 22).

XXV. Based upon information and belief, as well as statements made in the media, there is a gay and lesbian judicial club of judges. Many family court judges, especially from Brooklyn family court are members of this club. Family court Justice Mary E. Bednar is the alleged founder of this club and family court Justice Paula J. Hepner was a former president. This cast great doubts upon the neutrality of the judges and their real goals and beliefs which is not in preventing domestic violence and/or child abuse but the destruction of the heterosexual family and the persecution of heterosexual men, especially fathers. Such a charge of abuse of state power to discriminate and promote their creed demands a trial by jury on that matter alone.

XXVI. The defendants published the appealate division's decision in the New York Law Journal with the plaintiff's last name in bold capitol letters (Exhibit 2, Opposition Papers to Nick Chimenti). This is illegal in the state of New York which uses the laws of the confidentiality of the children as a smokescreen to cover-up New York State's heinious violations of human rights. Even federal cases dealing with children use anonymous names such as Doe; Doe v. Hennepin County, 623 F. Supp. 982. New York State, Family court appeals are usually published with last initials only (Exhibit 25). This further demonstrates that New York State does control New York State media, is abusing the police power of the state to distort freedom of speech and the dissemination of propoganda, is abusing the police power of the state to coerce the media to malign fathers' rights activists such as the plaintiff, is abusing the police power of the state to coerce the media to violate 42 USC 5106a to malign the plaintiff who is suing the state for horrific violations of human rights in family court by horrible violations of due process and who is attempting to expose the draconian kidnapping of children under color of state law within the family courts of New York State, especailly the 2nd Dept.

XXVII. Marjory Fields is director of the National Center on Woman and Family Law, Inc. (exhibit 26) whose mission statement is to provide legal family law services to women (exhibit 26) as well as Marjory Fields' financial interest in Legal Services for New York City (exhibit 26) is sufficient conflict of interest for Marjory Fields not to concurrently practice law and preside as a judge. As a judge, she should have no part in any legal firm or organization providing litigation, especially litigation that is prone to appear before her. In addition, the National Center on Woman and Family Law have a vested interest in Legal Services Corp (exhibit 26) which is another feminist litigation machine whose goals do not appear to be honorable. The bulk of the work i.e. legal representation by these corporations is in the domain of domestic violence and family law with a significant amount of work within New York City. As Judge Fields only has jurisdiction over family law matters, it is total impropriety for Judge Fields to try any case and this is grounds for impeachment. Furthermore, the Ethics Committee is fully aware of this matter (exhibit 26) but has never taken any action of any kind. Is this not bad faith on the part of New York State?

XXVIII. Marjory Fields is an officer of the coporation Sanctuary for Families (exhibit 27) that provides foster care facilities, shelters for battered women, and received federal and state funding therefore. It is impropriety for Marjory Fields to sit on the bench and make decisions that will send innocent children to facilities from which Marjory Fields can profit.

XXIX. The Rochester Society for the Prevention of Cruelty to Children had several former directors among whom were district attorneys and Dept of Social Service workers (exhibit 28) who based upon information and belief were upper echelon DSS employees. It is total impropriety that DSS workers and DAs should be directors and board members of facilities which are used as referrals by DSS and the DA's office.

XXX. As explained in the preliminary statement to 94-CIV-6678 (KMW) SDNY, (especially pages 12 thru 18, paragraphs 171 thru 190), the New York Society for the Prevention of Cruelty to Children (NYSPCC), receives hundreds of billions of dollars in federal and state aid to itself and its subsidiaries and controlled ownings. NYSPCC owns significant financial controlling interests in NYC bonds and other governmental interests. NYSPCC has financial and managerial control of Victim Services Agency within the NYC environs. Victim Services discriminatory and sexist policies were discussed in the Opposition Papers to Stella Arsenakos. NYSPCC has supervisory responsibility for these discrminatory actions and polices, at the very least if they are not the cause of these discriminatory policies. And, NYSPCC is using its financial and other influence to control Victim Services Agency and other NYC agencies as well as political institutions including the family courts; in order to continue to reap the illegal rewards of AFDC, medicaid and foster care benefits which can only be funneled into NYSPCC in the volume they are, by the family courts denial of due process to thousands of parent-victims every year. This unconstitutional, corrupt behaviour is fueled and funded by the misappropriation of federal and state funds. Mosting interesting is that NYSPCC has control of Sanctuary for Families, of which Justice Marjory Fields is director and is used on a regular basis by the courts for referrals of supervised visitation and other so-called mental health services.

XXXI. The plaintiff's correspondence to this court have been destroyed multiple times. This includes motions (And a motion for an immediate injunction) and other legal correspondence pertinent to the instant case and filed in accordance with the law. **THIS IS NOT ONE SINGLE INCIDENT BUT A REOCCURRING PATTERN OF MANY INCIDENTS THAT CAN NOT BE INTERPRETTED AS AN ACCIDENT! THIS IS AN OBSTRUCTION OF JUSTICE AND A MATTER**

WHICH THIS COURT MUST CONDUCT A FULL HEARING ON WITH THE PRESENTATION OF EVIDENCE AND TESTIMONY BEFORE ANY OTHER MATTER CAN BE DECIDED IN THE INSTANT CASE! Furthermore, this court should note that if the defendants can tamper with this court's record which is not the domain of the defendants, it is a fortiori that the defendants can and HAVE ALREADY tampered with the court records in their domain: New York State courts.

11. The defendants did not deny:

(i). That they violated the plaintiff's right to electioneer.

(ii). That they denied the plaintiff's right to vote.

(iii). That family court deals with infamous crimes that require a trial.

(iv). That defendants on family court cases have the right to trial by jury.

(v). That the plaintiff requested trial by jury.

(vi). That the plaintiff never signed a waiver waiving right to trial by jury.

(vii). That the plaintiff was nonetheless denied trial by jury.

(viii). That there is a US constitutional right to parent.

(ix). That the US constitutional right to parent requires a trial before infringement and/or termination.

(x). That there was a TV broadcast in which Karen Burstein stated that Hassidic men beat their wives into submission and even if they noe claim that they did deny that televised statement, this is a matter of fact that can be ascertained by discovery and a disputed fact that should be put to jury trial pursuant to 28 USC 2201. The court should take note that the defendants carefully and meticulously refuted other evidence brought by the plaintiff substantiating Karen Burstein's prejudice towards Orthodox/Hassidic men, but this item was specifically not refuted. Why not? Furthermore, why has not Karen Burstein been charged with race bias for this

statement by the attorney general of New York State?

(xi). Did not deny the misappropriation of federal funding.

(xii). Did not deny the fact of New York State government reports or implications of Brooklyn Family Court being a star chamber and having a 100% conviction rate.

(xiii) Did not deny that a campaigner for Karen Burstein made the statements cited, but only averred that Karen Burstein can not be responsible for what her advocates said. Do the statements of her supporters not show her intentions?

12. The defendants purposely rewrote history and altered the facts in their Memorandum of Law supporting their Motion to Dismiss to this court: They implied that there was a divorce and therefore Justices Burstein and Segal had jurisdiction when in fact there was and still is no divorce and/or legal separation at all. Therefore the defendants Motion to Dismiss is totally irrelevant as it does not deal with the case in question and/or should be stricken for misrepresentation of facts. Furthermore, the defendants again rewrote history and stated that there were trials and hearings, and that Judge Segal made a decision based upon the facts presented to him. This is simply not true. There never were any hearings, trials, the opportunity to present evidence or witnesses, or the opportunity to face your accuser by Judge Segal. In fact, Judge Segal's final order clearly states that he will NOT GIVE HARLOW ZIRKIND A TRIAL UNTIL HE GOES TO FORENSIC EVALUATION BY DR. NAFTALI BERRILL. Such an order clearly states that there was no trial. Such a gross misrepresentation of facts by the defendants is a sanctionable action as a dishonest representation upon the court and is sufficient to strike the defendants Motion to Dismiss. In any event, these are matters of fact in dispute that the plaintiff must insist pursuant to 28 USC 2201, be put to trial by jury before dismissal of this case as a matter of legal right.

13. The following alterations of facts and misrepresentations to this court were made on the following pages of the defendants

Memorandum of Law in support of the defendants' Motion to Dismiss:

A. Support proceedings are not ongoing and were not ongoing at the time of the filing of the Complaint. The contrary was stated by the defendants on page 2 and throughout the Memorandum of Law.

B. The defendants totally disregarded Judge Burstein's lack of jurisdiction and exceeding her jurisdiction and denial of due process on page 3 and throughout the Memorandum of Law.

C. The defendants altered history and maintained that the plaintiff and the co-defendant were divorced. This is an outright lie and stated on page 3. However, my wife's attorney, Mark A. Feldman constantly requested from me to give my wife a Jewish divorce; and my wife stated as the first thing upon meeting Judge Burstein for the very first time that she is getting divorced; and my wife stated on the witness stand that she wants to be divorced but can't afford it. If my wife could not afford to be divorced, how then did she afford Mark A. Feldman for family court? And, if she could afford Mark A. Feldman for family court, why then did she not go to divorce court? And, if Judge Burstein knew from the outset of the case that it was pursuant to a divorce, Judge Burstein should have declined to hear the case without a referral from Supreme Court! Why did not Judge Burstein refer the case to Supreme Court?

D. The defendants have deceitfully misrepresented and misinterpreted the Complaint to this court on page 7 by stating that the plaintiff's request is "rescinding all of Judge Segal's orders". In the Complaint, Plea for Relief, item 10, the sentence begins "If appropriate rescinding..." Notice that the defendants were shrewd enough NOT to capitalize the 'r' of rescinding. The court must note that the plaintiff is In Propria Persona and NOT an attorney; and that the plaintiff stated "If appropriate"; and therefore asked "or in the alternative ordering the State of New York to immediately commence A JURY

TRIAL on the order of protection and custody issues..." However, the plaintiff maintains that as explained in the Memorandum of Law, Point XIX and pursuant to 28 USC 2283 enforced upon the Civil Rights Acts, mentioned in the Memorandum of Law, Point XIX and the 14th Amendment, that injuctive relief is proper in the instant case.

E. Furthermore, the Memorandum of Law is permeated with statements about how the District Court can not decide custody and visitation issues. This is NOT the request of the plaintiff who is asking relief from denial of due process, malicious prosecution and their outcomes: all the civil rights violations that the plaintiff had to endure. This is clearly stated in paragraph 17 of the Complaint.

F. On page 9 of the Memorandum of Law, the defendants admit that Judge Segal made his decisions based on papers submitted and NOT on an evidentiary hearing. That is an admission of guilt that Judge Segal DID DENY DUE PROCESS OF LAW AND NEVER GAVE THE PLAINTIFF A TRIAL AT ALL. This is contrary to New York State law and United States constitutional law. This illegal action is further admitted to on page 17 of the Memorandum of Law where it is iterated that Judge Segal made his decision based on all the evidence of the motion papers only. This is contrary to New York State law and United States constitutional law. Does the plaintiff HAVE NO RIGHT TO BRING WITNESSES? WHERE IS THE TRIAL?

Furthermore, with all audacity the defendant continues on page 17 to state that the defendant brought a recusal motion and that it was heard! **THIS IS AN OUTRIGHT LIE! NO RECUSAL MOTION BROUGHT BY THIS PLAINTIFF IN STATE COURT WAS EVER HEARD! FURTHERMORE, THIS IS IN ABSOLUTE CONTRADICTION TO THE STATEMENT THAT JUDGE SEGAL MADE HIS DECISIONS BASED ON MOTION PAPERS ONLY; WITHOUT AN EVIDENTIARY HEARING; WHICH THE**

DEFENDANTS USE AS PROOF THAT THERE IS NO BIAS IN STATE COURT; AND THAT THE PLAINTIFF'S CONSTITUTIONAL ISSUES CAN BE ADDRESSED IN STATE COURT! THE VERY FACT THAT THE DEFENDANTS HAVE LIED IN THIS MATTER PROVES THEIR BIAS AND THAT THE PLAINTIFF IN VERY CERTAIN TERMS CAN NOT ADDRESS HIS CONSTITUTIONAL ISSUES IN THE ABSOLUTE KANGAROO COURTS OF THE SECOND DEPARTMENT; LED BY CHIEF JUSTICE GUY MANGANO -- WHO IS HEAD OF THE DISCIPLINARY COMMITTEE -- WHICH IS A FRAUD THAT AS A RULE DOES NOT INVESTIGATE COMPLAINTS FROM AGGRIEVED CITIZENS AS THEY ARE REQUIRED TO DO BY LAW, IN ORDER TO COVER-UP THE RAMPANT CORRUPTION OF THE JUDICIARY IN THE SECOND DEPARTMENT!

(I) **ON WHAT DAYS WERE THESE SO-CALLED HEARINGS HELD?**

(ii) **WHERE ARE THE TRANSCRIPTS FOR THE HEARING ON THE RECUSAL MOTIONS BEFORE JUDGE SEGAL?**

(iii) **WHERE ARE THE TRANSCRIPTS OF THE LAW GUARDIAN? AND DR. WEINSTEIN'S TESTIMONY AGAINST HER?**

(iv) **WHERE IS DR. MONTY WEINSTEIN'S TESTIMONY IN THESE HEARINGS?**

(v) **ANY SUCH TRANSCRIPTS PRODUCED ARE FORGERIES! DR. WEINSTIEN CAN EASILY INVALIDATE SUCH FALSE TRANSCRIPTS FROM A TRIAL AND HEARING THAT WAS NEVER HELD!**

(vi) **DID THE DEFENDANTS THINK THE PLAINTIFF WOULD TOTALLY FORGET ABOUT EXHIBITS 1 AND 9 OF THE COMPLAINT?**

(vii) **LET THE DEFENDANTS CAREFULLY**

READ EXHIBIT 1 OF THE REPLY TO STELLA ARSENAKOS, DEFENDANT BEFORE THEY MANUFACTURE MORE FALSE TRANSCRIPTS!

SUCH BLATANT LYING WHICH IS FRAUD AND MISREPRESENTATION TO THIS COURT; ON THE PART OF JUDGE PHILIP C. SEGAL, DEFENDANT, WARRANTS HEAVY SANCTIONS AND THE STRIKING OF HIS MOTION TO DISMISS! What Judge Segal did to this federal court is not a judicial act, not a ministerial act, but a common criminal act of fraud for which incarceration is the appropriate punishment: US v. Sharon Dunningan 91-1300 (1953); (citing that even though 18 USC 1621 may not be applicable because of the civil status of the case, however in the pursuit of justice the court should apply the same standards).

G. Unlike the many statements in the defendants' Memorandum of Law, neither Judge Burstein nor Segal made any rulings what-so-ever about child support. As a matter of fact, Judge Burstein even stated on record that she is not allowed to render a decision on child support.

H. The removal of my children from my life and me from their lives for two (2) years now; and ordered by Judge Segal until my youngest child is eighteen (18) years old in the year two thousand six (2006) is anything but TEMPORARY!

I. Let the plaintiff reaffirm that in spite of the defendants claims on page 15 of their Memorandum of Law, a father in New York State has as many rights as a Jew in Nazi Germany and just as much a chance of bringing his constitutional claims in New York State courts. Furthermore, as stated in the plaintiff's Reply to Rabbis Herschel Kurzrock and Mendel Epstein as well as the plaintiff's Rule 19 Motion to Join Justice William Rigler as a party; the judges of New York State, particularly the Second Department have a hatred towards Orthodox/Hassidic Jews, particularly Orthodox/Hassdic men and their religious outlook on marriage and family life as well as Orthodox/Hassidic Judaism in

general: so much so that these judges have gone out of their way to promote and invoke anti-Jewish legislation clothed in "equitable treatment" laws.

With all audacity and impunity these judges make the outrageous statements to Orthodox and Hassidic Jews about how and what "YOU" people should do before marriage such as live together maybe that would help reduce your divorce rate! Parenthetically, obviously, these judges are ignorant of the studied and surveyed sociological fact that people that live together before being married have no less a divorce rate than people who do not live together. (Exhibit 22)

Furthermore, Justice Burstein virtually every time the plaintiff was in the courtroom, gave the plaintiff, speeches off the record telling the plaintiff to get divorced and it is good for the plaintiff to do so, making such statements as: "It is over", "Your marriage is over", "finish it" and "just end it". Even if a judge is entitled to suggest a settlement, judges in family court -- which is for families as opposed to divorce court which is for divorces -- has no jurisdiction to mention the word divorce. Only when one day, the plaintiff's attorney, Ira Kerzner came five (5) minutes late to court and the plaintiff was denied Equal Protection under the law and the court did not wait for the plaintiff's attorney to arrive, -- my attorney arrived at 11:00 AM, five (5) minutes after we left the courtroom -- Judge Burstein called the case in order to adjourn it yet again for another two (2) months in order to deny the plaintiff any trial what-so-ever, and on that day after the five (5) minute session was finished and the adjournment made and the plaintiff was given a call slip with the date, when to return to court: Judge Burstein began a half (1/2) hour coercion session to coerce the plaintiff to get divorced. Finally, the plaintiff confronted Judge Burstein with the truth: "I agree to settling, but extortion is not the way to make a settlement." Upon hearing the word 'extortion' and being confronted with the truth, Judge Burstein collapsed into her chair, looked to her left, refused to look at the plaintiff, waived her hands in the air, and finally stammered

that, "No, No, Extortion is not the way to make an agreement." Judging by Judge Burstein's reaction, obviously my claim was and is very valid; AND Judge Burstein was abusing her position, the process and under the color of state law to extort the plaintiff AND SHE KNEW IT! Incidentally, I was accompanied by an acquaintance to court who was not in the court room, but waited outside the court room for me. On his clock, I was inside the courtroom for over 45 minutes.

J. This court must understand that Judge Burstein's desire to destroy Orthodox/Hassidic families transcends individual bigotry. It is a desire to destroy the family in general, and specifically the Jewish family which is part of a culture that cherishes the family and one of the last bastions of true family values and not just lip service and campaign promises to family values. Such beliefs and cultures defeat the lesbianism and feminism that Karen S. Burstein cherishes so dearly and has often stated her endearment in public to the press. These beliefs and cultures are diametrically opposed to the radical, subversive feminism that Karen S. Burstein has been pushing for years which supports (as part of its platform) mother headed households; single parenthood, meaning mother only families which the plaintiff maintains is an oxymoron; and the belief that fathers are not necessary for the proper emotional and psychological development of children into well adjusted adults.

K. As to the fraudulent claim on pages 16 & 17 of the Memorandum of Law, that Judge Segal has no bias towards the plaintiff, members of Fathers' Rights Metro, and especially Orthodox/Hassidic Jews, let this court be made aware of two (2) more examples of Judge Segal's self-hating, anti-Semitic, judicial acts of discrimination under the color of state law:

(i) Based upon information and belief, Rabbi Jacob Israel who was sentenced by Judge Philip C. Segal of Brooklyn family court to six (6) months in jail for non-payment of an onerous child support increase that was being contested; and Judge Segal rejected the rabbi's inability to pay such an

onerous amount; and Rabbi Israel was ordered to pay WITHIN TWO (2) WEEKS a retroactive award of thirty thousand dollars ($30,000-), HIS ENTIRE YEAR'S SALARY, above and beyond his hitherto usual payment of thirty dollars ($30-) per week: or go to jail. Rabbi Israel could not make the thirty thousand dollar ($30,000) payment within two (2) weeks, went to jail for two (2) weeks straight, and did the rest of the time three (3) days a week, every week until the sentence was completed. Rabbi Israel's attorney appealed the decision. The appeal was scheduled to be heard after the jail sentence had already been completed.

(a) Judge Segal showed no bias or history of discriminating against an Orthodox Jew? How many rabbis are sent to jail for non-payment of support?

(b) That absolute mockery of justice that Rabbi Israel's appeal could be heard only AFTER he had completed his jail sentence is further proof that there is absolutely no relief or valid judicial process within the State of New York, especially Kings County, particularly family court.

(ii) Based upon information and belief, Herschel Mueller, is an Orthodox/Hassidic Jew from Boro Park, who is in front of Judge Segal in Brooklyn family; and Herschel Mueller's wife's attorney is the co-defendant, Mark A. Feldman; and Herschel Mueller's wife's rabbi and advisor is the co-defendant, Mendel Epstein; and that Herschel Mueller's attorney is NOT ALLOWED TO TALK IN THE COURTROOM BY JUDGE SEGAL'S ORDER, AND IS BEING THREATENED WITH SANCTIONS AND CONTEMPT OF COURT FOR ATTEMPTING TO ASSERT HIS CLIENT'S RIGHTS BY LEGAL AND PROPER PROCEDURAL METHODS. And, Hershel Muller's attorney asked Judge Segal to recuse himself because of impropriety as this lawsuit is pending and claiming conspiracy between Judge Segal and Mark A. Feldman; and Judge Segal did not recuse himself in spite of the obvious impropriety.

(a) Judge Segal showed no bias or history of

discriminating against an Orthodox Jew?

(b) Why is Judge Segal AGAIN favoring MARK A. FELDMAN?

(c) Why is Judge Segal AGAIN favoring A CLIENT OF MENDEL EPSTEIN?

(d) Judge Segal has no history of denying due process and threatening sanctions when sanctions are not warranted?

(e) Why did Judge Segal not recuse himself? Is it not justified?

(f) Do not the above actions give the appearance that Judge Segal is possibly accepting bribes? Especially considering the rumors circulating the courthouse that he is, particularly from Nick Chimenti in the form of kickbacks; and circulating the Orthodox Jewish sections of Brooklyn, that Mendel Epstein is bribing family court judges. Is the attorney general aware of these rumors? If not, why not? If yes, has the attorney general made an investigation? If not, why not? If yes, what were the results? And, if hitherto, the attorney general was not aware of these rumors, but now is, has the attorney general now begun and investigation?

In summation, Judge Segal does have a history of being a megalomaniac, denying due process and discriminating against Orthodox/Hassidic men.

14. Be it clear to this court that the Eleventh Amendment does NOT empower judges to break the law and act like Gods. Furthermore, the Fourteenth Amendment was enacted as a specific Act of Congress exactly for the express purpose of defeating the abuse of process by bigoted, biased, and evil judges as Karen S. Burstein and Philip C. Segal and to penalize and punish such judges that abuse their public trust and position for their personal discriminatory and pecuniary motives. The Fourteenth Amendment was designed to limit the bounds of the Eleventh Amendment NOT to empower judges like Karen S. Burstein and Philip C. Segal to turn their courtrooms into Star Chambers, act like Torquemadas, kidnap,

extort and steal under the color of state law. Judges do not have absolute immunity when they enforce unconstitutional laws, pursue unconstitutional courses of action, exceed their jurisdiction, deny due process, deny trial by jury, and/or act in a discriminatory manner. All of the above apply to justices Karen S. Burstein, Philip C. Segal and William Rigler.

15. As to the lack of pecuniary interest on the part of the judges, having a job is a great pecuniary interest. The Office of Court Administration, led by E. Leo Milonas with the assistance and guidance of Chief Justice Judith Kaye have succeeded in creating an unnecessary administrative bureaucracy and judiciary for the furtherance of radical subversive feminists goals and greed as this bureaucracy creates jobs -- judgeships -- to try hundreds of thousands (100,000s) of frivolous and baseless cases with hopeless convictions just like the plaintiff's case which was initiated without any evidence of any kind. The overabundance of the frivolous and unsubstantiated lawsuits has created the fiction of crowded courtrooms and clogged court calendars that can only be remedied with even more judges to be paid with even more taxpayer dollars. The raw salary of Brooklyn family court exclusive of benefits and perks is approximately one million dollars ($1,000,000.00) per year. (This is a matter of public record and accessible in The Green Book.) Many studies have shown that nationally ninety-five to ninety-seven percent (95%-97%) of the cases in family courts are totally unfounded. Therefore, using the low end of the range, if 95% of these case would be dismissed due to lack of evidence, as they should be, then the ten (10) judge staff of Brooklyn family court would require half (1/2) a judge; and nine (9) of the judges in Brooklyn family court would be unemployed. That the family courts are overcrowded with clogged calendars is described in the Office of Court Administration's Press Release on page 7 which is Exhibit 5 of the plaintiff's Reply to Stella Arsenakos. Furthermore, on page 7 of the press release, Justice Judith Kaye discusses the need to hire more judges and expand the courts to

remedy the problem of overcrowding, heavy case loads and crowded calendars.

16. Although certain defendants were named because pursuant to F.R.C.P. 4(j)(2) "Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of the state for the service of summons or other like process upon any such defendants". Therefore, E. Leo Milonas must answer for the actions of his agency even if he were (subjunctive tense) not personally liable. However, the defendants named are also supervisory personnel who are responsible for the unconstitutional misconduct of their staff (70 ALR Fed 17; 70 ALR 594); And have failed to respond to the plaintiff's complaints and/or complaints brought on behalf of the plaintiff; And/or have knowledge of similar unconstitutional actions from other complaints brought and did not respond to those complaints; And are in a position to have a restraining influence upon these violations of civil rights. In addition, the plaintiff maintains that there are more similar individuals and/or state agencies which the plaintiff will address in the proper time and when he feels it is appropriate to do so.

The following are supervisory personnel, defendants and non-defendants in this case, who are pertinent to the unconstitutional actions against the plaintiff. These persons either knowingly or negligently allowed and/or encouraged unconstitutional actions against the plaintiff:

(i) E. Leo Milonas, Chief Administrative Judge of the Office of Court Administration, who sets policy for the courts; should be reviewing ALL reports produced that described the performance of the courts including but not limited to the New York State Compendium of Child Support which clearly demonstrates a consistent pattern of bias within New York State courts; and is in charge of giving seminars, lectures and

training in other forms, for judges; especially family court judges; And these training sessions are either discriminatory against men and fathers and/or not providing the proper sensitivity training especially in regards to domestic violence issues, particularly to men's issues if men's issues are addressed at all. Therefore, E. Leo Milonas can be held personally liable in contradiction to the defendants' claim on page 6 of their Memorandum of Law.

(ii) Guy Mangano, Chief Justice of the Second Department and head of the Disciplinary Committee that has the power to disbar and/or sanction lawyers.

(iii) Michael Ambrosio, Chief Justice of Brooklyn family court.

(iv) Kathryn McDonald, Chief Justice of Manhattan family court where the Department of Social Services initiates ALL their child support proceedings.

(v) Gerald Stern, head of the Commission on Judicial Conduct.

(vi) Harriet Weinberger, Chief of the 18B panel.

(vii) Abraham Hecht, President of the Rabbinical Alliance of America.

(viii) Rivke Haute and Susan Altman, officers of Agunah Inc., so-called Rabbi Mendel Epstein's organization for the aid and succor of '*Agunahs and battered women.*'

(ix) Judith Kaye, Chief Justice of the Court of Appeals, who issued the contract to Victim Services.

(x) Lew (Yehuda) Levin of GET FREE.

17. The court should note the difference between personal and pecuniary interest. Personal interest is a broad term that is not limited to financial gain. Advancement of a political agenda, long term political goal, or private prejudice, even a pet peeve, is a 'personal' interest. As such, Philip Segal, Karen Burstein, and William Rigler all had 'personal' interest in fixing the plaintiff's case in family and/or denying the plaintiff due process.

18. In contradiction to page 6 of the Memorandum of Law,

there is accountability and personal liability for an agency in its directors and/or agents when the agency follows an unconstitutional course, especially but not limited to denial of due process and/or Fourteenth Amendment violations.

19. As admitted by the defendants' on page 17 of their Memorandum of Law, the plaintiff made a First Amendment challenge in state court and is reasserting that challenge here and now in federal court. Therefore:

(i) As Supreme Court Justice Stevens stated in his dissenting opinion of District Court of Appeals v. Feldman (460 US 462), "If a challenge to a state court's decision is brought in United States district court and alleges violation of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the federal-question jurisdiction of federal court."

(ii) In addition, Justice Brennan stated, "Feldman 'invoked the administrative discretion of that body, simply asking that it temper its rule in his favor, for personal and not legal reasons,' Rejection of those petitions was not 'adjudicative' and was therefore not susceptible to certiorari review in this court."

(iii) And, in the District Court Appellate Division, 213 US App. DC 119, 661 F. 2d 1295, pp. 482-488; the Appellate Division held: "the District Court has jurisdiction over the elements of respondents' complaints involving a genral attack on the constitutionality of the District of Columbia Bar admission rule."

(iv) Furthermore, when rendering the decision of the US Supreme Court, Justice Brennan stated: "Feldman and Hickey simply sought an exemption from the rule. In particular, Hickey did not present any legal arguements nor did 'he demand admission to the examination as a matter of legal entitlement.' Ibid. He 'merely asked the court to exercise it administrative discretion".

Furthermore, the plaintiff in the instant case made many US Constitutional challenges to New York State domestic

relations law and its application. (Complaint: Cause of Action, Paragraphs 27 & 67, and Exhibit 14) and was denied a trial and any opportunity to be heard. And, as the state courts refused to address the constitutional violations, pursuant to federal statute the plaintiff is entitled by right to a hearing in federal court.

20. In contradiction to the defendants' claim on page 19, the plaintiff's "petition against his former spouse" is:

A. Non-existant because the plaintiff does not have any former spouses at all.

B. In terms of the plaintiff's ESTRANGED WIFE, according to the understanding of the plaintiff who is a layman and not a lawyer, that petition was already dismissed by state courts long before this case was entered into federal court and not a subject of New York State appellate review as the plaintiff's petition in colloquial English "WAS THROWN OUT OF COURT" and therefore is not appeallable.

21. As to the defendants' claim that the plaintiff did not list specific facts about constitutional violations, that arguement is totally ludicrous. Let the defendants' reread the Complaint and all its Exhibits. (Exhibit 14 is a list of dates and violations committed by former Justice Burstein.)

22. For emphasis, the plaintiff reiterates the section "Conspiracy To Violate Civil Rights" of the Complaint, paragraphs 146-149. That judges are not immune from 1985 actions and that the defendants do not have to act willfully, even though they did not have specific intent to deprive the plaintiff of a federal right, such defendants can be held to civil responsibility.

23. The Attorney General was notified that the Memorandum of Law was not signed (Exhibit 29). This matter had to be remedied as soon as possible. As per the instructions of the case manager, Mrs. PaulaMarie Susi, the Pro Se clerk's office was notified of this matter and should have brought this matter to the Attorney General's attention. The court should note that this letter from the plaintiff to the Pro Se clerk is among the correspondence described in Paragrah 10, Section XXXI, this

motion. As the Attorney General had sufficient notice and time to remedy this matter; and did not: The Attorney General's Memorandum of Law should be stricken from the record as a defense and basis for the motion to dismiss which should be considered baseless and dismissed as having no basis in fact or law. The Attorney General's motion to dismiss is merely a two page document which states no facts to corroborate its claims. However, the court should retain the motion to dismiss as evidence of attempted fraud upon this court and should be used as evidence in the contempt of court hearing requested by right by the plaintiff.

24. In contradiction to the defendants' claim on page 11 of their Memorandum of Law, if a state law violates a constitutional law, then the supremacy clause of the constitution is invoked and federal law takes precedence (93 L. Ed. 1056); And the Eleventh Amendment is meant to be restrictive and defining immunity to judges that act in good faith and provide due process. However, should due process and Fourteenth Amendment rights denied, then the Eleventh Amendment does not apply; Wherefore, New York State Family Court Act Section 145 can not be interpreted broadly to immunize New York State family court judges with more immunity than the Eleventh Amendment does; And Eleventh Amendment immunity requires the litigant be afforded due process and Fourteenth Amendment rights include but are not limited to, impartial non-discriminatory judges and that this be (subjunctive tense) the true meaning and interpretation of NYS FCA 145 "unless it is shown that his action in so doing was malicious or a deliberate abuse of his discretion."

25. As to the defendants' repeated citation of Rooker v. Fidelity Trust Co. (263 US 431); It is clear from the court's decision rendered by Justice Van Devanter, "that a full hearing was had therein and that the judgement was responsive to the issues" is a predicate for applying the Rooker doctrine. As the plaintiff was never afforded a trial, this case is totally irrelevant. Therefore, the Rooker doctrine is totally

inapplicable in the case before this court because:

A. Judge Segal never held any hearings or trial of any kind neither to issue a new temporary order beyond one year nor for the final order that imposed an eleven (11) year exclusion from the home. The court shoud note that according to New York State law: (i) A temporary order of protection can be issued for six (6) months and renewed with a trial for an additional six (6) months; and a permanent order of protection can be issued for a maximum of one year or up to three (3) years with consent by the defendant. There is simply is no law in the State of New York or legal precedent of any kind for the actions taken by Judge Segal. Simply put, Judge Segal feels that not only is he above the law but the can make the law. Judge Segal legislated in his court and he is not allowed to do so; and to do so is to exceed his jurisdiction. Judge Segal was with absence of all jurisdiction to legislate new laws in his court room and therefore has no immunity what-so-ever. Furthermore, as his order exceeded the statutory limitation by four (4) times, it is cruel and inhuman punishment.

B. Judge William Rigler never held any hearings or trial of any kind.

C. Judge Burstein (i) did not conduct any hearings of any kind until approximately eight (8) months after issue of the initial ex-parte order of protection and exclusion from the home which expires automatically after six (6) months and can not be renewed without a full evidentiary hearing and/or trial has taken place; (ii) did not conduct a full hearing as her belated trial was mistried and she never had the opportunity to right her wrongs which had grevious and far reaching repercussions upon the plaintiff. Parenthetically, had Judge Burstein either not displayed her bigotry, or made some attempt to right her wrongs which had greviuos and far reaching repercussions against the plaintiff, the plaintiff might not be taking this course of action against her.

26. In addition, the Attorney General's repeated reference to the Feldman doctrine (District Of Columbia Court Of Appeals

v. Feldman, 460 U.S. 462; 103 S. Ct. 1303; 75 L. Ed. 2d 206; (1983)) is without merit: This case in subject matter is not analogous in that the issue was not a great or infamous crime that requires a jury trial but a licensing matter which is a denial of property rights and a liberty interest but not a MAJOR liberty interest as the permanent denial of child custody. Furthermore, the most important difference which makes this case totally incongruous to the instant case is that Mr. Feldman had a hearing and the evidence was considered. No such comparable counterpart exists in the instant case where the plaintiff was plainly and clearly denied a trial four (4) times by New York State courts. As stated by the court: "In November 1976, Feldman applied to the Committee on Admissions of the District of Columbia Bar for admission to the District Bar under a rule which, prior to its recent amendment, allowed a member [***8] of a bar in another jurisdiction to seek membership in the District Bar without examination. In January 1977, the Committee denied Feldman's application on the ground that he had not graduated from an approved law school. Initially, the Committee stated that waivers of Rule 46I(b)(3), or exceptions to it, were not authorized. Following further contact with the Committee, however, Feldman was granted an informal hearing. After the hearing, the Committee reaffirmed its denial of Feldman's application and stated that only the District of Columbia Court of Appeals could waive the requirement of graduation from an approved law school."

27. In addition, "Hickey did not present any legal arguments nor did 'he demand admission to the examination as a matter of legal entitlement.' Ibid. He "merely asked the court to exercise its administrative discretion to permit him to take the test." Ibid. This amounted to a request that the court "make a policy decision equating his personal qualities with accredited legal education, not an adjudication requiring resort to legal principles." There was no issue of a biased trial or even an unbiased trial. Hickey was asking the court to consider his EXTENUATING circumstances and favor him with a waiver.

And, the court had considered his extenuating circumstances and decided not to favor him with a waiver. There was no issue of discrimination or bias. Simply a request for favor and "the petition "invoked the administrative discretion of [the court], simply asking that to temper its rule in his favor, for personal and not legal reasons." This has no analogy to the instant case at all where the plaintiff demands by right a trial. That the plaintiff even has to assert such a request is a demonstration that the courts of New York State are communist, fascist, and McCarthyist.

28. With all due respect to the court, the question does remain, is the consideration of a licensing application and/or a waiver considered adjudication? Especially as Feldman and Hickey never demanded a license by right but by favor and not by legal claims and arguements? And, even if the refusal to grant a waiver were an adjudication, the federal statute that confers jurisdiction upon the United States District Court to entertain a constitutional challenge to the rules themselves also authorizes that court to entertain a collateral attack upon the unconstitutional application of those rules.

29. Furthermore, there is a clear distinction between appellate review and collateral attack. If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the federal-question jurisdiction of the federal court. 28 U. S. C. @ 1331 (1976 ed., Supp. V). And, if the plaintiff challenging a decision by a state court proved facts comparable to the allegations made by the plaintiff in error and appellant in Yick Wo v. Hopkins, 118 U.S. 356 (1886), they would clearly be entitled to relief in the United States district court. If they were seeking admission to any other craft regulated by the State, they would unquestionably have such a right. And, the plaintiff feels he has proven facts comparable to the allegations of Yick Wo v. Hopkins and that a jury trial would bear this out.

30. In spite of all the other issues which were denied, still the

District Court had jurisdiction as a federal question was raised. So to, in the instant case, the District Court has jurisdiction as federal questions are raised.

REBUTTALS TO CASES CITED BY THE ATTORNEY GENERAL AS "PRECEDENTS"

31. In regards to the cases of Hernstadt and Merrick, in an attempt to grasp again at straws in the face of a tidal wave of proof of New York State's discrimination and legion of corrupt judges in the family courts the Attorney General of New York State has advanced two cases of desperate attempts of other victims of the extortion and kidnapping under color of state law by the family courts. Although theses case were struck down, they are not analogous to the case brought by the plaintiff.

32. Hernstand v. Hernstadt, 373 F. 2d 316 (1967), involved a divorce in which the husband, the father (as is the usual discriminatory practice of the family and matirmonial courts to discriminate and persecute fathers) attempted to have custody and visitation restructured in federal court as well as seek monetary damages for denial of visitation.

A. Although the plaintiff (in Hernstadt Ibid.) asserted bad faith "by raising a constitutional claim of full faith and credit to the Connecticut decree" and the court denied the assertion as frivolous, "where the constitutional claim is frivolous, as here," and consequently "the suit should be dismissed"; no proof in the form of governement statistics were rendered as in the instant case (Exhibits 2, 3, 4, 5 & 6), and no DOCUMENTED claims of discrimination and racism were put forward, nor were any of the state laws being constitutionally challenged. In addition, the claim of violation of separation of Church and State was not made. In addition, the plaintiff was afforded the opportunity to prove bad faith: something the State of New York would not dare allow this plaintiff.

B. The plaintiff most definitely agrees with the court's decision in Hernstadt (Ibid.) that "it appears to be settled law that custody and visitation rights are incapable of being reduced to any pecuniary standard of value." Therefore, as far as

custody and visitation are concerned: "the action here does not meet the $10,000 jurisdictional amount required". However, in the instant case, the denial of due process cost the plaintiff approximately $30,000-, in addition there was a loss of property, and finally that the denial of due process caused an extortionery extraction of on-going child support paid in cash, under duress, amounting to a minimum of $5,000-. In addition, although there may be no pecuniary standard to use for damages; punitive damages for kidnapping under the color of state law are surely in order; and it is quite common for kidnappers to ask for sums of five (5) million dollars for one individual. Such a penalty, for such a crime, is highly appropriate and will deter future similar acts on the part of the State or any other kidnappers under the color of state law. It is irrelevant if the kidnapper uses candy, picks up an unweary teenage hitckhiker or files false abuse charges and has bigotted psychologists file false reports with the courts: kidnapping it is and kidnapping is a crime. In the United States of America, kidnapping used to be a capital crime, today it is sanctioned and promoted by the State with the kidnappers wearing black robes.

33. In Merrick v. Merrick, 441 F. Supp 143, (1977), the case dealt with a father out of wedlock and not the father within a marriage as is the plaintiff in the instant case. There are also many other descrepencies which make this case totally irrelevant and of no precedant what-so-ever:

(i) "Unconstitutional discrimination and denial of due process are claimed to exist as the result of a supposed (rebuttable) presumption enforced by the New York courts by which the mother's right to custody of an illegitimate child is said to be considered superior to that of the father, based not on the child's best interests or the relative fitness of the mother and father (Complaint, para. 14), but rather because of improper discrimination by reason of illegitimacy and sex (Complaint, para. 17). n3 In addition, Mr. Merrick claims that, although the New York Family Court Act @ 513 provides that each parent

of an illegitimate child is liable for the child's support, as the statute is applied, the entire burden of support of an illegitimate child is placed upon the father."

(a) This was the only claim of discrimination made by the plaintiff, Mr. Merrick. However, the plaintiff in the instant case has also cited religious discrimination.

(b) Furthermore, the plaintiff, Mr. Merrick only stated supposed and alleged discrimination unlike the plaintiff in the instant case who has substantiated his claims with government reports, statistics (Exhibit 2, 3, 4, 5 & 6), testimony (Exhibit 10, and as Ameen Maanan is dead, her statements must be accepted as testimony pursuant to Federal Rules of Evidence 804(a)(4)) and volumes of evidence which the defendants have ridiculously stated are so numerous as to have the suit dismissed. Has the court ever heard of a murder trial not being conducted because there were too many witnesses?

(c) In addition, in the Merrick case, the court never ruled on the issue of child support laws being enforced in a sexist discriminatory manner as the plaintiff, Mr. Merrick had no proof only allegations. However, the plaintiff in the instant case submits the New York State, Child Support Standards Act, Evaluation Project Report of 1993 which is produced once every four (4) years (Exhibit 5). Even though this report has been candy-coated and manipulated to present a much more sterile, unbiased, undiscriminatory and non-extortive picture than reality: It is still a confession of serious and pervasive wrong doing of biased, discriminatory, and extortive support courts that are constantly losing records, issuing orders without mandatory, statutory required evidence and PERSISTENTLY EXCEEDING THE STATUTORY GUIDELINES WITHOUT DOCUMENTED CAUSE. Most notably, that the poorer or more economically disadvantaged the father, the greater the deviation from the statutory, garnishing requirements which impoverish the father-defendant. (Page xiv and xv of the report.) Furthermore, there were cases in the sampled data, that the garnishing was so much greater than the statutory

requirement that it "would have skewed the report" (Page xvi - xviii and 51 of the report) and the statisticians simply left the data out of the calculation. In plain English, they doctored the report because it was so incriminating.

(ii) "Finally, Mr. Merrick asserts that Mrs. Merrick relies on the claimed discriminatory presumption to extort money from Mr. Merrick for her own support under the pretense of seeking support for Rosebud." The plaintiff in the instant case did not make this claim but rather that the money being extorted is for the purpose of coercing the plaintiff to perform a religious ritual. In addition, unlike the plaintiff, Mr. Merrick who claimed a persumption, the plaintiff in the instant case has been substanatiating his claims by statements of the defendant-mother's Hellenistic so-called rabbi: Mendel Epstein. Who has made numerous statements to other father-victims about being financially destroyed (As Mendel Epstein did to Micheal Hizme) and taking away their licenses (CPA) and has gone so far as to write a book "The Jewish Woman's Guide To The Get Process" where he clearly states that a husband-father should be destroyed, especially by financial means (which implies that this Hellenistic Rabbi Mendel Epstein promotes and/or engages in other means such as physical violence to 'destroy' husband-fathers).

(iii) "Mr. Merrick also alleges, in some detail in the complaint, that Mrs. Merrick is unfit to have custody of Rosebud." The plaintiff has not raised this issue in the complaint, although it is true. The only time the plaintiff mentioned this issue was to highlight the Unequal protection under the law and misadjudication. And, if the plaintiff could be given a fair trial in a fair court, unlike the kangaroo courts of New York State, especially the 2nd Dept., the plaintiff maintains that pursuant to New York State law after the crimes the defendant-mother has committed, the plaintiff would be entitled to sole custody. But, this is not the substance of this complaint or the relief requested. Only, that the plaintiff prays that once and for all he be afforded a trial, and that the trial be guaranteed to be fair by

oversight of a master and not a mockery of justice or an excuse to further launch trumped charges at the plaintiff.

(iv) As to the court's decision that "There is no authority for the proposition that a person who employs the state's judicial processes, as has Mrs. Merrick, is thereby clothed with the state's authority." is totally irrelevant. (a) Mr. Merrick had a trial. Mr. Zirkind did not.

(b) Mr. Merrick did not document discrimination, corruption or negligence. Mr. Zirkind has.

(v) That the court decided that "The New York courts are bound no less than we to uphold the Constitution of the United States, guided by decisions of the Supreme Court of the United States with respect to discrimination in the treatment of illegitimate children and their parents. See, Fiallo v. Bell, 430 U.S. 787, 97 S. Ct. 1473, 52 L. Ed. 2d 50 (1977); Jimenez v. Weinberger, 417 U.S. 628, 94 S. Ct. 2496, 41 L. Ed. 2d 363 (1974); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972); and Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)." only reenforces the plaintiff's arguement that this court not only has jurisdiction in this matter but an OBLIGATION to hear this case as well as order and ensure that the New York State courts abide by the Constitution of the United States.

(vi) The plaintiff in the instant case poses this question to the court in regards to the court's decision in Merrick v. Merrick: "In addition, inasmuch as counsel for Mrs. Merrick has brought to the attention of this Court New York cases in which custody of an illegitimate child was awarded to the [*147] father, n6 it appears that this is an appropriate case for application of the abstention doctrine. See Martineau v. Ghezzi, 389 F. Supp. 187 (N.D.N.Y.1974) (three-judge court). n6 See, Stone v. Chip, 68 Misc.2d 134, 326 N.Y.S.2d 520 (Fam.Ct., N.Y.Co.1971); Godinez v. Russo, 49 Misc.2d 66, 266 N.Y.S.2d 636 (Fam. Ct., Westchester Co., 1966)." Does six (6) cases out of a million (1,000,000) or ten thousand (10,000)

connote non-discrimination? Each judge in Brooklyn Family Court handles fifty (50) cases a day. There are ten (10) judges in the court. Each case usually includes an order of protection and an award of custody. This is five hundred (500) custody awards a day. Multiplied by fifty (50) weeks a year is a total of twenty-five thousand (25,000) cases a year. Assuming that each case has three (3) appearances a year, that would reduce the total to approximately eight thousand (8,000) cases a year. This is only Kings County. If the US government hired eight thousand (8,000) white people per year contrasted by six (6) black people per year, would this prove non-discrimination? Put to a jury, this answer to this question would be no.

(vii) The decision in Merrick v. Merrick by the 2nd Circuit, which was neither appealed nor certorari requested; is in direct contradiction to Caban v. Mohammed 441 US 380, which establishes that very the essence of the laws complained of in Merrick v. Merrick are innately discriminatory. The US Supreme court decided that it is unconstitutional to make a distinction between an unwed mother and father where a difference "substatially related to an unimportant state interest". The US Supreme Court also cited Orr v. Orr 440 US 268, that the effect of overbroad generalizations is to discriminate and to use gender pervasive differences for subtle discrimination.

34. The only issue that can properly be construed from this case to the instant case is that the plaintiff sought a declaration concerning an unconstitutional statute and the court rightfully assumed jurisdiction under 28 USC 1343 and 42 USC 1983.

35. That heinious crimes against humanity are being committed on a regular, daily basis in family court by: including but not limited to the judges themselves, is well known and common knowledge. The U.S. Constitution and the people of the United States do not stand for such criminal activity and have therefore enacted by the Congress of the United States, the Fourteenth Amendment of the U.S. Constitution as the Supreme Law of the land which prohibits judicial abuse of process in order to discriminate or persecute a

class or any individual. The New York State Attorney General is fully aware of the criminal, discriminatory and persecution activities of the family courts and it judges; and their culpability. Yet, the Attorney General of New York State attempts to shield these criminals with "judicial immunity" that they simply do not have and by perverting well known axioms of U.S. law with supporting incorrect citations. In Ex Parte Virginia, 100 U.S. 339; 25 L. Ed. 676; 10 Otto 339, (1879), there is no pratical difference between "ministerial duties" and "judicial action". The court merely made the distinction because the defendant (a judge that was incarcerated for violating civil rights and being discriminatory) claimed to have been performing a judicial act. The court clarified the situation and stated that the act committed was ministerial and not judicial, AND EVEN IF IT WERE JUDICIAL THE DEFENDANT WOULD BE GUILTY AND LIABLE. Such is obivious from reading the final paragraphs of the court's opinion:

> "It was insisted during the argument on behalf of the petitioner that Congress cannot punish a State judge for his official acts; and it was assumed that Judge Cole, in selecting the jury as he did, was performing a judicial act. This assumption cannot be admitted. Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. It often is given to county commissioners, or supervisors, or assessors. In former times, the selection was made by the sheriff. In such cases, it surely is not a judicial act, in any such sense as is contended for here. It is merely a ministerial act, as much so as the act of a sheriff holding an execution, in determining upon what piece of property he will make a levy, or the act of a roadmaster in selecting laborers to

work upon the roads. That the jurors are selected for a court makes no difference. So are court-criers, tipstaves, sheriffs, &c. Is their election or their appointment a judicial act?

"But if the selection of jurors could be considered in any case a judicial act, can the act charged against the petitioner be considered such when he acted outside of his authority and in direct violation of the spirit of the State statute? That statute gave him no authority, when selecting jurors, from whom a panel might be drawn for a circuit court, to exclude all colored men merely because they were colored. Such an exclusion was not left within the limits of his discretion. It is idle, therefore, to say that the act of Congress is unconstitutional because it inflicts [*349] penalties upon State judges for their judicial action. It does no such thing.

"Upon the whole, as we are of opinion that the act of Congress upon which the indictment against the petitioner was founded is constitutional, and that he is correctly held to answer it, and as, therefore, no object would be secured by issuing a writ of habeas corpus, the petitions are

"Denied."

36. The plaintiff maintains that (a) issuing an order without a trial is not a judicial act, (b) making a sum and substance divorce in family court is outside family court's jurisdiction, (c) requesting, telling, demanding in any shape manner or form, even intimating to anyone in family or any other court to perform some religious divorce ritual is TOTALLY outside the scope of the court's jurisdiction and in violation of the First and Fourteenth Amendments; and therefore not a judicial act.

37. The Attorney General of New York State has dug deep into the past of American law, seeking to substantiate her claims, even though some of her cases have been nullified by new laws passed in the interim of the decisions and the present. The Attorney General has not only attempted to rebut the plaintiff's legal assertions (as in Ex Parte Virginia), but also has cited the case Ex Parte Virginia on behalf of the State defendants, as well as cited her own cases out of the past. Therefore, the defendants and the plaintiff are on equal "playing ground" and no legal precedent, no matter how old, should be overlooked by this court as long as there has not been the passing of new law(s) that nullify the decision and standing of the case cited.

38. The case, Lakeside v. Oregon, 435 U.S. 333; 98 S. Ct. 1091; 55 L. Ed. 2d 319 (1978), cited by the Attorney General is totally irrelevant. If it has any relevance, the Attorney General will have to explain it.

39. Bradley v. Fisher, 80 U.S. 335; 20 L. Ed. 646; 13 Wall. 335, (1871), cited by the Attorney General is irrelevant as it was decided prior to the Civil Rights Act that was passed by Congress in the year 1875 which negated and nullified the standing common law immunity afforded judges with an explicit act of congress making judges liable within the limited and narrow scope of discrimination and corruption; and it applies to disbarrment of an attorney which is at best a licensing matter and/or an administrative judicial matter; NOT a great and infamous crime that requires a trial by jury. Because the Civil Rights Act had not yet been made into law, is the reason this case makes no mention of a violation of civil rights and is therefore totally incongruous with the instant case. In addition, the plaintiff in Bradly v. Fisher, Ibid., had no proof of malice. The proof that he did have was deemed irrelevant by the court. In addition, there is no mention of violation of separation of Church and State by the judge.

40. Indeed, the US Supreme Court stated this in the decision of Pierson v. Ray, 386 U.S. 547; 87 S. Ct. 1213; 18 L. Ed. 2d 288,

(1967), "n3 The opinion in Ex Parte Virginia, did not mention Bradley v. Fisher, 13 Wall. 335, which held that a judge could not be held liable for causing the name of an attorney to be struck from the court rolls. But in Bradley, the action was not brought under any of the Civil Rights Acts."

41. The Attorney General cited Pierson v. Ray, 386 U.S. 547; 87 S. Ct. 1213; 18 L. Ed. 2d 288, (1967), a case that is not analogous to the instant case. It appears that the Attorney General is saying that the plaintiff knowingly committed a crime and should therefore bear the punishment as well as to promote the notion of absolute judicial immunity in contradiction to the Civil Rights Act of Congress and the Fourteenth Amemdment. Furthermore, the Attorney General seeks to disspell the conspiracy charge based on real and documentable conspiracy because undocumented conspiracy is not grounds for a conspiracy charge.

42. Unlike the appellants in Pierson v. Ray, Ibid. whom the court held "At the new trial, however, the court held that the ministers could not recover if it were proved that they went to Mississippi anticipating that they would be illegally [***8] arrested because such action would constitute consent to the arrest under the principle of volenti non fit injuria, he who consents to a wrong cannot be injured." And it was shown that "Letters from the leader of the group to its members indicate that the clergymen intended from the beginning to go to Jackson and attempt to use segregated facilities at the bus terminal there, and that they fully expected to be arrested for doing so. The group made plans based on the assumption that they would be arrested if they attempted peacefully to exercise their right as interstate travelers to use the waiting rooms and other facilities at the bus terminal, and the letters discussed arrangements for bail and other matters relevant to arrests.", the plaintiff in the instant case committed no crime by not going to so-called court ordered so-called forensic evaluations. There is no precedant for anyone in the State of New York ever being held in contempt of court for not complying which such an

order or being denied a trial for not complying with such an order, even though other individuals have not complied with such an order. The plaintiff was informed by his attorney, Carol Zimmerman and other attorneys that he is entitled by New York State law as upheld by the Appeallate division of the Second Dept., NOT TO GO TO FORENSIC EVALUATION. Although, the court MAY -- not definitely, but MAY -- hold it against the plaintiff. As the plaintiff had subpeonaed, documented evidence, that he could not have physically committed the acts described in the original family court petition by Mazal Zirkind (and therefore a conviction was hopeless, which is why Mazal Zirkind's witness' heresay evidence was permitted over Harlow Zirkind's attorney's objections, prosecution was merely aggravated harrassment by lawsuit and prior knowledge that the so-called forensics were nothing more than ad hominem attacks by bigotted court appointed personnel) as well as the available testimony of Dr. Monty N. Weinstein who had (i) observed the children with the plaintiff; (ii) the parental alienation of the mother and (iii) the brainwashing of the law guardian maligning the plaintiff to his children; and the Child Welfare Association's letter that there was no signs of abuse (Exhibit 11) the plaintiff felt quite secure that he would be successful at trial without the subjective, bigotted, opinion of the court ordered so-called forensic psychologist. Obviously, the family court judges felt the same way, but their bigotry and hate, their blatant anti-semitism, femo-nazism and hatred of men would not allow them to conduct a trial and find a mother guilty and remove her custody for parental alienation, malicious prosecution, visitation interference, and filing false abuse charges: even though this is the law in New York State but rather that the plaintiff should be made an example of, for having stood on his constitutional and other legal rights.

43. In addition, the appeallants in Pierson v. Ray, did not prove conspiracy nor did they make specific allegations of conspiracy: "The record is barren of any proof or specific

allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court." The petitioners merely "attempted to suggest a 'conspiracy' between Judge Spencer and the police officers by questioning him about his reasons for finding petitioners guilty in these cases and by showing that he had found other 'Freedom Riders' guilty under similar circumstances in previous cases. The proof of conspiracy never went beyond this suggestion that inferences could be drawn from Judge Spencer's judicial decisions." This is quite different from the allegations and proof submitted by the plaintiff in the instant case as well as the evidence which the plaintiff maintains can be obtained upon discovery.

44. The case Francis v. Crafts, 203 F.2d 809, (1953) cited by the Attorney General is from the First Circuit in which certiorari was denied is neither controlling nor compelling because "In the case at bar it is not even alleged that Judge Crafts acted maliciously or from corrupt motives in issuing the removal order in question." Rather, as the opinion of the court labors to prove, the defendant-judge acted in good faith. However, the plaintiff in the instant case has claimed that the judges did act maliciously and with corrupt motives.

45. Furthermore, I pose this question to this court, if judges have absolute immunity, then why did the district court even entertain the case at all? It should have been summarily dismissed. But rather, when charges of discrimination and corruption are made, they must be answered in a court of law! **LET THE JUDGES CHARGED WITH DISCRIMINATION COME FORWARD AND ANSWER THE CHARGES IN A COURT OF LAW BY TRIAL BY JURY.**

46. In addition, there are certain facts which make this case totally uncomparable to the instant case:

(i) "At the time of making inquiry into the facts, defendant was informed and believed that the plaintiff was an inmate of the Walter E. Fernald State School as the result of a voluntary

admission pursuant to Mass. Gen. Laws, Chap. 123, Sec. 47." There is nothing voluntary in the instant case. There is no manner of consent. This is of great importance. Extreme pressure and all manners of coercion were brought to bear on the plaintiff, especially by defendant Karen Burstein because: One can not contest the impropriety of consented agreements and arbitration. One can only make the claim of extortion and although an abuse of process and malicious prosecution is an act of extortion, the courts are leary to deal with the issue. However, judicial decisions require due process which none of the defendant-judges afforded the plaintiff. Karen Burstein being the most clever, shrewdest and polished of all the defendant-judges, attempted to whitewash her crimes and denial of due process by attempting to coerce the plaintiff into an extorted and unequitable settlement thereby reliquishing her guilt. But, as clearly stated on the record and in the unaltered transcripts (if they still exist), the plaintiff flatly refused to submit to such extortion and coercion; and demanded due process. The plaintiff was fully aware of Karen Burstein's crimes; and her ruse and attempt at absolution; and the plaintiff refused to aid and abet in covering up her criminal, sexist, anti-semitic, Hellensitic, discriminatory activities by way of denial of due process and kidnapping clothed in the color of state law; and to the detriment of the plaintiff's claim.

(ii) "Defendant was further informed and believed that the mother of the plaintiff, who was then still a minor, was present at the said school on March 19, 1940, 'and was notified of the request being made for the removal of the plaintiff therefrom and that she assented to such removal'." Further, the issue of consent is raised and answered as above.

(iii) "Further the affidavit recited that the said order for removal 'entered by this defendant in his judicial capacity was merely an order for removal of the plaintiff from one institution to another in order that he might receive a more suitable type of care.'" Here the court distinguishes between the denial of a right and the continuation of denial of a right, between the

inception of incarceration and the transfer of a prisioner from one form of incarceration to another. Theorizing, that if the prisioner is already incarcerated, the judge can not be held liable for incorrectly incarcerating the prisoner merely because the judge altered the place of incarceration even though the new prision may be of harsher standards. Change of prison is not ordering incarceration. This has no analogy to the instant case. Karen Burstein initiated the denial of parental rights and exclusion from the home. When her original order expired, again, she simply issued a new order without due process in contradiction to New York State law. So too, Philip Segal had to issue a new denial of parental rights and exclusion from the home in which he did so without due process and in contradiction to New York State law.

47. The case, Zuckerman v. Appellate Div., 421 F.2d 625, (1970), is not only irrelevant but supports the plaintiff's claim that the 2nd Dept of the State of New York is corrupt and merely plays procedural games until they can mete out the so-called justice they wish.

48. In the Zuckerman case: (i) The New York State Appellate Division made an investigation. No such comparable trial was afforded the plaintiff in the instant case. (ii) Then, the United States Supreme Court granted certiorari, vacated the App. Div.'s order and remanded. (iii) The App. Div. of the corrupt 2nd Dept. acted again without due process which caused the New York State Court of Appeals to reverse the order because due process had been denied. (iv) So, then the corrupt App. Div. of the 2nd Dept. afforded a kangaroo hearing and then issued the same order all over again. (v) Now, the New York State Court of Appeals could rubber stamp the denials of due process. This is exactly how New York State courts maneuvor until they can 'legally' mete out the so-called 'justice' they wish. Similarly in a recent family court case, a father -- Micheal Hizme -- had his custody removed without trial. The New York States courts continued manuevoring to deny Mr. Hizme a trial on the matter, until finally on an appeal the Appeallate

Division remanded the case for a trial. Again, the lower courts of the 2nd Dept. continued to play procedural games and continued to deny Mr. Hizme a trial. Exactly in what New York State court should the instant case be remanded to?

49. More importantly, the 42 USC 1983 issue was never decided because the court felt that the App. Div. is not a person under 42 USC 1983. However, Karen Burstein, Philip Segal and William Rigler are all people. Of course, they can advance the agruement that they are monsters and not people and therefore not liable as people under 42 USC 1983, or that their actions are so heinious as not to be under the color of any law and therefore not liable under 42 USC 1983 (This arguemen. has been advanced before in other civil rights cases and flatly rejected by the federal courts.) but the court should reject this arguement as they perpetrated their crimes in courtrooms as judges. Furthermore, there is no mention of corruption, bribery, discrimination, or violation of separation of Church and State, anti-semitism or racism in Zuckerman v. App. Div.

50. Furthermore, Family Court Act 145 expressly grants permission to sue a family court judge who has acted with malice and/or in bad faith. As state can grant more rights than the federal constitution or expand on the rights granted by the constitution, but a state can not detract from the rights granted by the federal constitution (Arizona v. Scums, 93-1660 (1995) and Michigan v. Long, 463 US 1032).

51. The case Atlanta Professional Firefighters Union, Local 134 v. City Of Atlanta, 920 F.2d 800; 117 Lab. Cas. (CCH) P35,441; 30 Wage & Hour Cas. (BNA) 169; (1991) is irrelevant. Just because some city or state official acted in good faith in regards to some other law, totally unrelated to the instant case, does not mean New York City or State officials have also acted in good faith.

52. The case, Gutierrez v. Vergari, 499 F. Supp. 1040; 31 Fed. R. Serv. 2d (Callaghan) 293, (1980), is irrelevant as the plaintiff, Mr. Gutierrez, was afforded a trial, albeit a mock trial he claimed. However, the plaintiff in the instant case, Givon

Zirkind was never afforded a trial.

53. In addition, the complaint filed by Mr. Gutierrez gave "no hint of the substantive nature of the alterations and tempering allegedly done" and was not a model of "particularity and specificity", however, the complaint alleged "specific" acts and therefore was "not a case where the complaint is utterly devoid of any factual allegations indicating a deprivation." However, the plaintiff in the instant has stated specific acts, including but not limited to paragraphs 20 thru 61 and Exhibit 14 of the Complaint, with documentation and has witnesses ready and anxiously waiting for an opportunity to be heard.

54. The case Polur v. Raffe, 912 F.2d 52; (1990) is irrelevant. In that case, the plaintiff was afforded numerous trials while in contrast the plaintiff in the instant was never afforded a trial and the only semblence of a trial was before Judge Burstein which commenced two (2) months after the maximum limit required by law had already expired AND EVEN THAT MOCKERY OF JUSTICE WAS DECLARED A MISTRIAL. In addition, the plaintiff in Polur v. Raffe never proved malice. He never cited any evidence. All he did was just make allegations. In contrast the plaintiff in the instant case maintains he has proven malice and that the matter has to be put to a jury trial. The plaintiff Polur, relied "on vague, prolix conclusory allegations of a conspiracy without pleading any overt acts or providing a basis in fact for his claim. It is incumbent on a plaintiff to state more than conclusory allegations to avoid dismissal of a claim predicated on a conspiracy to deprive him of his constitutional rights. See, e.g., Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) (per curiam); Sommer v. Dixon, 709 F.2d 173, 175 (2d Cir.) (per curiam), cert. denied, 464 U.S. 857, 78 L. Ed. 2d 158, 104 S. Ct. 177 (1983)." In contrast, the plaintiff has submitted so much evidence that the defendants claim that the complaint should be dismissed because it is not brief!

55. There are some other matters to note from this case:

(i) "A finding that the claims against a judge are barred by

judicial immunity does not require "that the action against the private parties accused of conspiring with the judge must also be dismissed." Dennis v. Sparks, 449 U.S. 24, 27, 66 L. Ed. 2d 185, 101 S. Ct. 183 (1980)." That a judge has immunity is not absolute. There must be a trial to determine the matter (as the plaintiff has demanded trial by jury a judicial determination is insufficient) e.g. if a judge actually had jurisdiction (as Karen Burstein had no jurisdiction to make a divorce in family court); if there really was good faith; if there was no malice; if there was no discrimination, etc. In addition, even if the judge is exonerated (in the instant case any one or combination of three) that does not automatically dismiss the lawsuit against all the other defendants.

(ii) "The doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue which is identical to one necessarily decided in a prior action and which the parties were afforded a full and fair opportunity to contest in that prior proceeding. Halyalkar v. Board of Regents, 72 N.Y.2d 261, 266, 527 N.E.2d 1222, 1224, 532 N.Y.S.2d 85, 87 (1988); see In re The Am. Tobacco Co., 880 F.2d 1520, 1527 (2d Cir. 1989)." 'Relitigation' means to litigate again. Litigation means that there was a full trial which by defnition means a full opportunity to be heard and a decision was made. If there was litigation in state court under the conditions of a full and fair opportunity to contest in that proceeding, then to litigate again -- relitigate -- is prohibitied. This has no application to the instant case. (a) Before Judges Segal and Rigler, there was no opportunity to be heard at all. (b) Before Judge Burstein there was no opportunity to be heard for eight (8) months in derogation of the law that requires that a trial be held within a maximum of six (6) months. Therefore as there was no litigation in state court, the issue of relitigation is irrelevant: It is impossible to relitigate that which was never litigated and the very fact that the matter was never allowed to be litigated is the greastest proof of bad faith. Furthermore, even if (and the plaintiff admantly maintains that there was no trial but should)

the jury find that there was a trial, that does not mean that there was no bad faith involved in the proceedings which must also be determined at trial.

56. "Moreover, Polur has not demonstrated that he was denied a full and fair opportunity to litigate these issues in the prior proceedings." However, the plaintiff in the instant case has already submitted documentation proving that he was never allowed a trial nor will the court ever give him a trial.

57. Although on the surface, the case, Gibson v. Berryhill, 411 U.S. 564; 93 S. Ct. 1689; 36 L. Ed. 2d 488, (1973), appears relevant and supporting, it is not. This case is irrelevant to the instant case. The issues of pecuniary interest as a disqualification and exhausting state administrative remedies are raised. The final decision is that pecuniary interest need not be clearly defined to be disqualifying. Indeed, the Supreme Court upheld the District Court's decision that there was conflict of pecuniary interest of the administrative board in question. In addition, administrative remedies are not equivalent to criminal matters that need not be exhausted under certain circumstances which the plaintiff maintains exist in the instant case as great and irreparable harm (as defined by the US Supreme Court) exist. Even so, the court concluded that administrative remedies need not be exhausted if there is no opportunity to be heard. The remand of the Supreme Court was based upon the change of Alabama laws and recent verdicts of the Alabama Supreme Court of similar cases with verdicts in favor of the plaintiff. Therefore, the Supreme Court felt the matter could now be fairly and properly handled in state court. No such comprable circumstances have occured in New York State. As a matter of fact, the new denials of due process added by new state legislation concerning orders of protection with instructions written into the code to require police to arrest a husband just upon a wife's say so -- but not a husband's so say about his wife -- and new proposed legistation by the well known Hellenist and State legislator Sheldon Silver; who has collaborated with Sidney Klass, Editor of the Jewish Press, and

Justice William Rigler; to give judges discretion to decide upon their whims and caprices what religious rituals are detrimental to a child and therefore warrant removal of custody. In addition, a new even more unreasonable assessment has been passed as law requiring the revoking of a driver's license should the Support Enforcement Unit declare a father in arrears. As most people drive to work, how is one to pay the child support if the means of livelihood is removed? This obvious problem to the old and new child support assessments has never plagued the judiciary.

58. "For the District Court, the inquiry was not whether the Board members were "actually biased but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him." 331 F.Supp., at 125. Such a possibility of bias was found to arise in the present case from a number of factors. First, was the fact that the Board, which acts as both prosecutor and judge in delicensing proceedings, had previously brought suit against the plaintiffs on virtually identical charges in the state courts. This the District Court took to indicate that members of the Board might have "preconceived opinions" with regard to the cases pending before them. Second, the court found as a fact that Lee Optical Co. did a large business in Alabama, and that if it were forced to suspend operations the individual members of the Board, along with other private practitioners of optometry, would fall heir to this business. Thus, a serious question of a personal financial stake in the matter in controversy was raised. Finally, the District Court appeared to regard the Board as a suspect adjudicative body in the cases then pending before it, because only members of the Alabama Optometric Association could be members of the Board, and because the Association excluded from membership optometrists such as the plaintiffs who were employed by other persons or entities. The result was that 92 of the 192 practicing optometrists in Alabama were denied participation in the

governance of their own profession."

59. The court's ultimate conclusion was "that to require the Plaintiffs to resort to the protection offered by state law in these cases would effectively deprive them of their property, that is, their right to practice their professions, without due process of law and that irreparable injury would follow in the normal course of events." Such is the case with orders of protection, supervised visitation, etc. by New York State family court machinery. Aggreived citizens such as the plaintiff in the instant case will be effectively denied their human and constitutional rights (of parenthood, property and liberty) if these aggreived citizens are required to avail themselves of the so-called protection of state family courts composed of judges, law guardians, psychologists, social workers and mental health facilities with huge financial interests in the denial of due process and kidnapping under the color of state law,

60. In regards to handling the matter in state courts: [The] "Court has expressly held in recent years that state administrative remedies need not be exhausted where the federal court plaintiff states an otherwise good cause of action under 42 U. S. C. @ 1983. McNeese v. Board of Education, 373 U.S. 668 (1963); Damico v. California, 389 U.S. 416 (1967)."

61. Furthermore, "n13 This exhaustion requirement does not apply generally to state "judicial," as opposed to "administrative," remedies. See Bacon v. Rutland R. Co., 232 U.S. 134 (1914); City Bank Farmers Trust Co. v. Schnader, 291 U.S. 24 (1934)."

62. Concerning State agencies, the court recognized: "n14 State administrative remedies have been deemed inadequate by federal courts, and hence not subject to the exhaustion requirement, on a variety of grounds. Most often this has been because of delay by the agency, Smith v. Illinois Bell Tel. Co., 270 U.S. 587 (1926), or because of some doubt as to whether the agency was empowered to grant effective relief, Union Pac. R. Co. v. Board of Comm'rs of Weld County, 247 U.S. 282

(1918); McNeese v. Board of Education, 373 U.S. 668 (1963). State administrative remedies have also been held inadequate, however, where the state administrative body was found to be biased or to have predetermined the issue before it. Kelly v. Board of Education, 159 F.Supp. 272 (MD Tenn. 1958)." And this applies to Nick Chimenti, MSW; Dr. Naftoli Berrill; and Stella Arsenakos as a representative of the 18B Panel, the Commission on Judicial Conduct, the Greivance Committee of the Second Department and the Child Welfare Administration (the latter three are not defendants in the instant case at this time and have not yet been joined to this lawsuit although upon discovery evidence may conclusively implicate some or all of these agencies and/or some of their employees as co-conspirators at which time a Rule 19 motion will be filed with the court).

63. In addition, as the plaintiff made the statement about "living here and knowing the people" (sometimes personally) as in the infamous Neustein case, this court should be aware of local issues that only it should be aware of and therefore (it is one of the reasons why) the plaintiff picked this court in which to invoke jurisdiction. "As remote as we are from the local realities underlying this case and it being very likely that the District Court has a firmer grasp of the facts and of their significance to the issues presented, we have no good reason on this record to overturn its conclusion and we affirm it." Brooklyn Family Court is literally down the block from the District Court of the Eastern District of New York. It is common knowledge in this county and througout the legal profession nationwide, that there is bribery of the judges in Kings County courts, especially family court. I highly recommend (as is pursuant to F.R.C.P. 31 (a) (2)) that the judge of the District Court take a walk down the block and make an inspection of the deplorable conditions of family court and its proceedings, especially between the hours of 8:30 - 10:00 A.M. and interview some of the aggreived citizens in the hallways.

64. Finally, in spite of the deicision: "But we do think that considerations of equity, comity, and federalism warrant vacating the judgment of the District Court and remanding the case to that court for reconsideration in light of the Alabama Supreme Court's judgments in the Lee Optical Co. and House of $ 8.50 Eyeglasses cases. We in no way intimate whether or not the injunction should be reinstated by the District Court." This obviously, does leave leeway for the District Court to reinstate the injuction should it now find the circumstances warranted. "It is so ordered." The court should take into consideration that the facts as they are in the present, must be considered by the court. This will always have a bearing on a case. E.g. just because previously applied laws do not prove to be discriminatory does not mean on remand that a newly passed law is not discriminatory.

65. The case, Perez v. Ledesma, 401 U.S. 82; 91 S. Ct. 674; (1971); 27 L. Ed. 2d 701 is not applicable as a defence for the defendants of the Attorney General of New York State that cited it:

A. No bad faith was established unlike the plaintiff in the instant case who has established bad faith. And, as the plaintiff has presented evidence to that effect, only some of which the defendant has denied, therefor the Younger Abstention does not apply. Furthermore, those items of bad faith which New York State denies but the plaintiff avers must be accepted as fact by the court in accordance with FRCP. At the very minimum, they must be put to a jury trial for determination before there can be a dismissal. As the court stated, "1. The three-judge court erred in issuing the suppression order and thereby stifling the then-pending good-faith state criminal proceeding during which the defense should first raise its constitutional claims. Younger v. Harris, ante, p. 37. Pp. 84-85." and "There is nothing in the record before us to suggest that Louisiana officials undertook these prosecutions other than in a good-faith attempt to enforce the State's criminal laws. We therefore hold that the three-judge court improperly intruded

into the State's own criminal process and reverse its orders suppressing evidence in the pending state prosecution and directing the return of all seized materials."

B. The court carefully and clearly describes when the district court can assume jurisdiction, even when there are pending state prosecutions. "Given our decisions today in No. 2, Younger v. Harris, ante, p. 37; No. 7, Samuels v. Mackell, and No. 9, Fernandez v. Mackell, ante, p. 66; No. 4, Boyle v. Landry, ante, p. 77; No. 83, Byrne v. Karalexis, post, p. 216; and No. 41, Dyson v. Stein, post, p. 200, in which we have determined when it is appropriate for a federal court to intervene in the administration of a State's criminal laws, the disposition of this case should not be difficult".

C. One of the conditions in which a district court may assume jurisdiction is when a state statute and/or its application is alleged to be unconstitutional. "That court held the Louisiana statute constitutional on its face, but ruled that the arrests of appellees and the seizure of the allegedly obscene materials were invalid for lack of a prior adversary hearing on the character of the seized materials."

D. If the claim that the statute and/or its application is unconstitutional the claim should be brought in state court, "Here Ledesma was free to present his federal constitutional claims concerning arrest and seizure of materials or other matters to the Louisiana courts in the manner permitted in that State. Only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate. See Younger v. Harris, supra; Ex parte Young, 209 U.S. 123 (1908)." However, the plaintiff in the instant case had subpeonaed hospital records, witnesses and other evidence which he was never given the opportunity to present that clearly proves his innocence: A conviction was hopeless and hence the litigation was purely for the purposes of harassment.

E. In addition, the plaintiff could not possibly raise his constitutional claims in state court. The plaintiff made the attempt and it was dismissed as outside the jurisdiction of the court. In the instant case it is simply impossible, because of particularly but not limited to the tremendous bad-faith, prejudice, discrimination, corruption and religious persecutions in the New York State courts, esepecially the family and matrimonial courts of the 2nd Dept.

F. Furthermore, as no hearing on the issue was held when required, five (5) different times by the New York State courts; that an appeal on the issue has been made is totally irrelevant. The state has already shown a definite pattern of denial of due process. The availability of a later full hearing in state court does not cure the problem or make amends for past denials of due process and their results. As the US Supreme Court recognized in Gibson, and cited in Perez v. Ledesma, a subsequent de novo hearing cannot undo the interim harm to constitutional rights. "Id., at 577 n. 16. See also <=98> Juidice v. Vail, 430 U.S., at 340-341 (Stevens, J., concurring in judgment)."

66. The case, Moore v. Sims, 442 U.S. 415; 99 S. Ct. 2371; 60 L. Ed. 2d 994; (1979), cited by the Attorney General is also not congruous with the instant case:

A. "The doctor found that the children were battered, and Paul was hospitalized for 11 days." This is a physical fact and not a bogus, speculative issue such as a psychological report which almost always invokes the status quo dictum in direct contradiction to the law as clearly explained and stated in the recent US Supreme Court ruling in the Baby Richards case. As is stated in the opinion of Moore v. Sims by Supreme Court Justice Rehnquist: "The District Court held that in any proceeding involving parental rights, the State must bear as a matter of federal constitutional law a burden of "clear and convincing " evidence. Yet no proceeding was pursued in this case to the point where the standard could be applied, and consequently appellees can point to no injury in fact."

However, the plaintiff in the instant case can and does point to unclear and unconvincing proof that was presented incontradiction to clear and convincing proof which was never allowed into the court room. And, "A second illustration is the challenge to statutorily authorized preseizure investigative procedures: there was apparently no preseizure investigation in this case. n11 Alabama State Federation of Labor v. McAdory, supra, at 461; Public Service Comm'n v. Wycoff Co., 344 U.S. 237, 245-246 (1952).

B. "n11 The District Court focused on psychiatric examinations, although there is no evidence that there was any examination of this nature administered to the Sims children before or after the temporary removal. Sims v. State Dept. of Public Welfare, 438 F.Supp. 1179, 1191." However, in the instant case there was a psychological examination of the children by Dr. Naftali Berrill. This also establishes by Supreme Court definition, that the plaintiff in the instant case has suffered an injury! This claim also applies to all the other defendants, including but not limited to: Karen Burstein, Stella Arsenakos, Esq; Dr. N.G. Berrill; Nick Chimenti, M.S.W.

C. And furthermore, the court stated: "'Younger, and its civil counterpart which we apply today, do of course allow intervention in those cases where the District Court properly finds that the state proceeding is motivated by a desire to harass or is conducted in bad faith, or where the challenged statute is '"flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.' " This is exactly the instant case. Especially so, in that the defendants in the instant case have a history of aggravated harassment by lawsuit and discrimination.

D. "The District Court, however, did not rely expressly on these established exceptions to the Younger doctrine in finding that abstention was inappropriate in this case."

E. In addition, many of the issues raised in this case did not deal with judicial proceedings: "Many of the challenged

actions taken by the state do not and will not involve any judicial proceeding." In the instant case, there has been -- under the color of state a law -- a blatant denial of judicial due process and the erection of a kangaroo, McCarthyist., discriminatory court: Brooklyn Family Court under the auspices and blessing of the State of New York. Furthermore, the Supreme Court Justice Rehnquist stated: "the federal court should not exert jurisdiction if the plaintiffs 'had an opportunity to present their federal claims in the state proceedings.' Juidice v. Vail, supra, at 337 (emphasis in original); see Gibson v. Berryhill, 411 U.S. 564, 577 (1973)." This scenario never happened in state court and will never be allowed to happen. The proof is that the plaintiff was denied a trial five (5) times: (a) By Judge Burstein after she issued the original temporary order of protection (b) By Judge Burstein at the end of six (6) months before renewing the temporary order of protection which is an excess of jurisdiciton (c) By Judge Segal when he assumed the case and extended the temporary order of protection beyond the statutory maximum of a year which is cruel and inhuman punishment: which could only have been done under the color of the law if a PERMANENT ORDER OF PROTECTION had been issued which requires a fact finding hearing which was never conducted at all. All of which is an excess of jurisdiction. (d) By Judge Segal who never conducted a trial at all before issuing his "final" orders with a penalty four (4) times longer than anything allowed on the books by the law of the state of New York: i.e. beyond the statutory limitations which is an excess of jurisdiction (e) By Justice Rigler who did not hear a petition of habeas corpus. In addition, the plaintiff brought approximately one dozen visitation violations in front of Judge Burstein: Not one visitation violation was heard. In addition, the plaintiff brought a visitation violation and contempt of court motion before Judge Segal, this was never heard. It is more than obvious that should the State of New York "all of a sudden issue orders in accordance with the law and allow constitutional issues to be

heard in its courts" it is only a ruse and sham to evade federal prosecution and as soon as the threat of federal prosecution is lifted, the same draconian, kangaroo, McCarthyist courts will convene again with redoubled ferver to persecute Mr. Zirkind for having dared to enforce his rights, demand due process and expose the heinious crimes and denial of due process under the color of state law occuring everyday in the family and matrimonial courts of New York State.

67. The case, United States v. D'Argento, 373 F.2d 307, (1967) is not truely analogous as D'Argento and the others involved were afforded a trial where the decision was made by a jury.

68. In addition, that which "The Supreme Court stated, at page 764, 86 S. Ct. at page 1832: "* * * both federal and state courts have usually held that it offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture." (Footnote omitted.) (Schmerber v. State of California (1966), 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908)" is not analogous at all to the instant case. Hard evidence such as fingerprinting, photographing, measurements [which are physical in nature - planitiff's note], being asked to speak or write for identification [this is also only physical in nature: speaking as in to produce a voice print or for voice recognition, writing for comparison of handwriting NOT FOR PSYCHOLOGICAL HANDWRITING ANALYSIS -- see 28 USC 1731: Handwriting, "The admitted or proved handwriting of any person shall be admissible, FOR PURPOSES OF COMPARISON, TO DETERMINE GENUINENESS OF OTHER HANDWRITING ATTRIBUTED TO SUCH PERSON.], to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture" is totally incomparable to speculative, unscientific and subjective analysis which IS NOT FOR IDENTIFICATION PURPOSES ONLY. Blood samples are also hard evidence. In addition, all of the above are refutable at trial because they are

hard evidence. This is not so with speculative, unscientific and subjective psycho-analysis.

69. In addition, "the lineup...was fairly conducted", there were no claims of bias, discrimination or denials of due process. The bank robbers in D'Argento only charged that their Fifth Amendment rights were violated not their Fifth and Fourteenth Amendment rights were being violated. "There certainly was no disposition on the part of the FBI agents to prevent any of the defendants from contacting counsel. Prior to the lineup, defendant D'Argento was assisted by agent McLean in placing a telephone call to his attorney. Likewise, Mrs. Schang was assisted by an FBI agent in her attempt to call an attorney after she told him the attorney's name at her home that morning. Defendant Tomaszck, upon being informed of his rights, indicated it was too early to call an attorney and upon leaving his home, requested his wife to do so." This has no analogy to the instant case where discrimination, bias and religious persecution is charged and that Dr. NG Berrill has possibly committed fraud and misrepresentation upon the court in other similar -- family court -- cases, and that Dr. N.G. Berrill is possibly a member of the radical, Hellenistic, cult as the co-defendants and other members of his profession such as Dr. Benjamin Lerner who is also a Jewish evaluator for the family courts and was a past president of a Hellenitic Agunah organization, GET Inc. (Exhibit 21). In addtion, based upon information and belief, Nafali Berrill receives funds from Agunah Inc.

70. Furthermore, Dr. N.G. Berrill is alleged at not having the requisite clinical experience to perform the function designated by the court. This matter can be clearly ascertained upon discovery; and his so-called psychological report is in contradicition to US Supreme Court rulings of the Baby Richards case where the doctrine of status quo for custody and adoption is labeled for what it is: kidnapping under the color of the law. In addition, this is a charge against almost all court appointed evaluators, many of Mark Feldman's cases, and

virtually all of the 18B panel's cases.

71. Furthermore, in D'Argento, there was no claim of corruption on the part of the police, but in the instant case, as Dr. Berrill receives a tremendous amount of state and/or federal funding for his so-called psychological reports; and that these reports are secured by judicial referral exclusively; and that the judges are charged with corruption, religious persecution and bias as well as discrimination; and that these corrupt judges want and need manufactured evidence to conform to their wishes to use as a basis to render their bigoted and biased decisions; Dr. Berrill is charged with premeditated falsification of the so-called evidence -- which is nothing more than speculation at best -- in order to continue to secure court referrals and promote his Hellenistic religious views. No such comparable claims were made in United States v. D'Argento.

72. Furthermore, in D'Argento there was no police effort to elicit a conviction which Dr. Berrill was charged with attempting to do. "During the period of which defendants complain, no confessions were made; no attempt was made to obtain confessions or statements from the defendants. We hold there was no unreasonable delay and that the defendants were not deprived of due process."

73. In regards to Trotman v. Palisades (557 F. 2d 35) and Cory v. White (457 U.S. 85; 102 S. Ct. 2325; 72 L. Ed. 2d 694; (1982); and the issue not being able to sue the state if the remedy requires the state to pay funds from ITS treasury:

> The court stated in Cory v. White: "We are unpersuaded by this view of Edelman. That case involved a suit against state officials claiming that their administration of a particular federal-state program was contrary to federal regulations and the Constitution. Among other things, the plaintiffs sought a judgment for benefits that had not been paid them. The case was against individual officers who allegedly were violating federal law, and it therefore arguably fell outside the reach of the Eleventh Amendment under Ex parte

> Young, 209 U.S. 123 (1908). Edelman held, however, that the case was in effect a suit against the State itself because a judgment payable from state funds was demanded. It was correctly noted that Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459 (1945), was authority for this result.
>
> "There can be no doubt that Edelman will admit of a broader construction. The plain language of that decision asserts that the Eleventh Amendment bars only suits "by private parties seeking to impose a liability which must be paid from public funds in the state treasury," id., at 663, and not actions that may have "fiscal consequences to state treasuries . . . [that are] the necessary result of compliance with decrees which by their terms [are] prospective in nature," id., at 667-668. Thus, at least in a case such as this, in which the very controversy is the result of our federal system, I continue to believe that resort to federal interpleader is not proscribed by the Eleventh Amendment as construed by Edelman v. Jordan."

Similarly in the instant case, although the plaintiff's monies may be in the state's treasury in addition to the state receiving a tremendous amount of federal funds for conducting these activities against the plaintiff (which imparts responsibility and an obligation on the federal court to deal with the mismanagement of these funds); even though these monies are in the state treasury THEY ARE NOT THE STATE'S FUNDS as they were acquired (sometimes by illegal and unconstitutional seizure based upon discrimination) by improper, fraudulent or unconstitutional means; **THEREFORE THE STATE HAS NO VALID CLAIM TO THESE FUNDS AND THE PLAINTIFF IS FULLY ENTITLED TO DEMAND RETRIBUTION AND INDEMNIFICATION FROM THESE FUNDS.** This issue is further addressed in the Memorandum of Law. Furthermore, as addressed in the Memorandum of Law, the 14th

Amendment provides for punitive fines against the state treasury in matters of discrimination.

74. This is obvious from Trotman v. Palisades when the court stated, "Searching for revenue from which a judgement might be paid, we note that the compact and the NY Parks & Recreation Law indicate the existence of three sources of Commission revenues: (a) gifts and bequests, (b) fees and (c) appropriations. The Commission cannot rely upon gifts and bequests which may come in unpredictable sums with various legally enforceable conditions attached. What the Commission collects in fees for use of the New York segment of the park must be turned over to the state treasury. Appropriations heretofore or hereafter made by the legislature obviously must be paid from the state treasury." This is not analagous to the receipt of Title IV-D federal funding, nor should the state be allowed to reap the rewards of unconstitutional and discriminatory behaviour.

75. Furthermore, in regards to the issue of the state's consent, addressed in Trotman v. Palisades, the plaintiff reasserts his belief that Family Court Act 145, gives EXPRESS PERMISSION TO SUE A JUDGE WHO ACTS WITH MALICE OR DELIBERATE ABUSE OF DISCRETION. This issue is further addressed in the Memorandum of law.

76. In addition, the case of Cory v. White merely further supports the plaintiffs position when the court clearly stated: "thrice restated the settled rule that the Eleventh Amendment does not bar suits against state officers when they are "alleged to be acting against federal or state law." as in the instant case.

77. The case, Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89; 104 S. Ct. 900; 79 L. Ed. 2d 67; (1983), cited by the Attorney General with it's 5-4 decision is neither controlling nor compelling. There is no precedent for the ruling in Pennhurst, but rather the avalanche of precedents are squarely to the contrary. Furthermore, the case is not analogous as there is no charge of discrimination which is a federal law and not a state law; and the case was only concerned with the

enforcement of state law and no constitutional challenges to state laws were raised. But, in the instant case, federal law as well as state law has been violated. The state no more than its citizens has the right to discriminate. And, the issue that once the district court has jurisdiction over a federal question, it has jurisdiction over state matters as well, was not present in the Pennhurst case. In addition, even if the State of New York were to argue in contradiction to the plaintiff's evidence, witnesses and copies of government reports that the state does not have a bigoted policy: Justices Karen Burstein, Philip C. Segal, and William Rigler, personally are bigots.

78. In addition, the issue of relief coming directly from the state treasury as "funding for the county mental retardation programs comes almost entirely from the State" is not true in the instant case. The funding for the majority of the programs used against the plaintiff comes from federal funds to state agencies as rewards and reimbursements for their actions. This money is not raised by state taxation and occupies a significant ($2 Billion dollar) portion of the state's balance sheet.

79. Also, This suit is not brought directly against the state but in conjunction with private citizens, (Mazal Zirkind, Hershel Kurzrock, Mendel Epstein) and so-called officers of the court, or other private citizens claiming court appointment or quasi-judicial immunity. As such relief, by @ 1983 is not barred by the 11th Amendment as if the suit were brought directly against the state.

80. In addition, "n17 the court found that the defendants acted in good faith", which is not true in the instant case. The bigotted and greedy judges and state officials acted in bad faith. At the very least, a fact finding hearing is required to determine this issue, and that hearing must be conducted before a jury which will determine the issue as the plaintiff requested a trial by jury as a matter of right.

81. Even assuming that the federal court can not force the state to give me a trial, it can force the state not to take away my children without giving me a trial and furthermore, a trial is

such a basic right and secured under the 14th Amendment that denial thereof is obviously unequal protection under the laws, discrimination and classification of the plaintiff as a sub-human which is so repugnant to the constitution that the federal court not only has jurisdiction but an obligation to force a state to conduct a trial and a fair, unbigoted trial.

82. Basicly, "This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law." And the court answered the question as to the suit being against the state by saying: "n11 'The general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration,' or if the effect of the judgment would be 'to restrain the Government from acting, or to compel it to act." Dugan v. Rank, 372 U.S. 609, 620 (1963) (citations omitted)."

83. And, "The Court has recognized an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State. This was the holding in Ex parte Young, 209 U.S. 123 (1908), in which a federal court enjoined the Attorney General of the State of Minnesota from bringing suit to enforce a state statute that allegedly violated the Fourteenth Amendment. This Court held that the Eleventh Amendment did not prohibit issuance of this injunction. The theory of the case was that an unconstitutional enactment is "void" and therefore does not "impart to [the officer] any immunity from responsibility to the supreme authority of the United States." <=83> Id., at 160. Since the State could not authorize the action, the officer was "stripped of his official or representative character and [was] subjected in his person to the consequences of his individual conduct." Ibid.

84. The Supreme Court concluded that "n13 We do not decide whether the District Court would have jurisdiction under this reasoning to grant prospective relief on the basis of federal law", to which there is no corrollary in the instant case, especially because of the discrimination alleged in the instant

case.

85. The Supreme Court continues: "As discussed above, the injunction in Young was justified, notwithstanding the obvious impact on the State itself, on the view that sovereign immunity does not apply because an official who acts unconstitutionally is "stripped of his official or representative character," Young, 209 U.S., at 160. This rationale, of course, created the "well-recognized irony" that an official's unconstitutional conduct constitutes state action under the Fourteenth Amendment but not the Eleventh Amendment. Florida Dept. of State v. Treasure Salvors, Inc., 458 U.S. 670, 685 (1982) (opinion of STEVENS, J.). Nonetheless, the Young doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to "the supreme authority of the United States." Young, supra, at 160. As JUSTICE BRENNAN has observed, "Ex parte Young was the culmination of efforts by this Court to harmonize the principles of the Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution." Perez v. Ledesma, 401 U.S. 82, 106 (1971) (concurring in part and dissenting in part). Our decisions repeatedly have emphasized that the Young doctrine rests on the need to promote the vindication of federal rights. See, e. g., Quern v. Jordan, 440 U.S., at 337; Scheuer v. Rhodes, 416 U.S. 232, 237 (1974); Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299, 304 (1952).

86. "The Court also has recognized, however, that the need to promote the supremacy of federal law must be accommodated to the constitutional immunity of the States. This is the significance of Edelman v. Jordan, supra. We recognized that the prospective relief authorized by Young "has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely a shield, for those whom they were designed to protect." 415 U.S., at 664.

87. And, the court noted: "Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446 (1883) (cited only for

proposition that a suit alleging unconstitutional conduct is not barred by the Eleventh Amendment, and that State cannot be sued without its consent); Poindexter v. Greenhow, 114 U.S. 270 (1885) (unconstitutional-conduct suit is not suit against State); Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894) (same). Prior to Florida Dept. of State v. Treasure Salvors, Inc., supra,"

88. And the court noted that once jurisdiction is invoked, it may deal with state issues: "This Court long has held generally that when a federal court obtains jurisdiction over a federal claim, it may adjudicate other related claims over which the court otherwise would not have jurisdiction. See, e. g., Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Osborn v. Bank of United States, 9 Wheat. 738, 819-823 (1824)."

89. And the court continued that discussion coupled with the issue of pendent jurisdiction: "As the Court of Appeals noted, in Siler and subsequent cases concerning pendent jurisdiction, relief was granted against state officials on the basis of state-law claims that were pendent to federal constitutional claims. In none of these cases, however, did the Court so much as mention the Eleventh Amendment in connection with the state-law claim. Rather, the Court appears to have assumed that once jurisdiction was established over the federal-law claim, the doctrine of pendent jurisdiction would establish power to hear the state-law claims as well. The Court has not addressed whether that doctrine has a different scope when applied to suits against the State. This is illustrated by Greene v. Louisville & Interurban R. Co., 244 U.S. 499 (1917), in which the plaintiff railroads sued state officials, alleging that certain tax assessments were excessive under the Fourteenth Amendment." Similarly the child support assesments, which may not be taxes, but are excessive beyond the legal guidelines (Exhibit 5, CSSA Evaluation Report); and the poorer the man, the greater the deviation from the legal guidelines; as such the child support laws are similarly unconstitutional. Continuing: "The Court first rejected the officials' argument that the

Eleventh Amendment barred the federal constitutional claim. It held that Ex parte Young applied to all allegations challenging the constitutionality of official action, regardless of whether the state statute under which the officials purported to act was constitutional or unconstitutional. See 244 U.S., at 507. Having determined that the Eleventh Amendment did not deprive the federal court of jurisdiction over the Fourteenth Amendment question, the Court declared that the court's jurisdiction extended "to the determination of all questions involved in the case, including questions of state law, irrespective of the disposition that may be made of the federal question, or whether it be found necessary to decide it at all." Id., at 508. The case then was decided solely on state-law grounds. Accord, Louisville & Nashville R. Co. v. Greene, 244 U.S. 522 (1917).n28

90. "n28 The case was argued in the same way. The Eleventh Amendment argument in the briefs is confined to the federal constitutional claims. See, e. g., Brief for Louisville & Nashville R. Co., O. T. 1916, Nos. 778, 779, pp. 15-38 (jurisdiction over federal claims); id., at 38-39 (pendent jurisdiction over state claims). Indeed the State's brief somewhat curiously closes with a concession that the federal courts had jurisdiction. Brief for State Board and Officers, O. T. 1916, Nos. 778, 779, p. 139; see Reply Brief, O. T. 1916, Nos. 778, 779, p. 2 (pointing out concession). Thus, while the State's position on the Court's jurisdiction over the federal claims is somewhat unclear, the State never argued that there might not be jurisdiction over the local-law claims if the Court found jurisdiction over the federal question in the case."

91. The only truly relevant issue of pendent-jurisdiction in the Pennhurst case is that "a federal court should decide a case on state-law grounds where possible to avoid a federal constitutional question. Nothing in our decision is meant to cast doubt on the desirability of applying the Siler principle in cases where the federal court has jurisdiction to decide the state-law issues."

92. The court concluced that "As noted above, pendent jurisdiction is a judge-made doctrine of expediency and efficiency derived from the general Art. III language conferring power to hear all "cases" arising under federal law or between diverse parties. See Mine Workers v. Gibbs, 383 U.S., at 725. See also Hagans v. Lavine, supra, at 545 (terming pendent jurisdiction "a doctrine of discretion"). At best, the plaintiff can only interpret the New York State's citation as a plea, pray, and more appropriately stated, a begging of the mercy of the court to aid and abet the coverup of the horrific, well-known violations of human rights in the so-called, euphemistically titled family courts and child protective services. If this court intends to allow the State of New York to operate as the Khmer Rouge, please inform the plaintiff immediately, as the plaintiff has obviously been utterly deluded in believing that he lives in a democracy and a free country.

93. Furthermore, with all due respect to the US Supreme court's decision, I beg to differ: To afford sovereign immunity to the defendants for actions which were prohibited by state law, appears to be a remarkable misapplication of the ancient doctrine of sovereign immunity. In a completely unprecedented holding, the Court held that Pennsylvania's sovereign immunity prevents a federal court from enjoining the conduct that Pennsylvania itself has prohibited. No rational view of the sovereign immunity of the States supports this result. Furthermore, in the instant case, New York State law, Family Court Act 145, is merely a reinfocement of federal law: anti-discrimination and 14th Amendment laws, 42 USC 5106a, and numerous rulings applying the 9th Amendment to require due process to the termination of parental rights.

94. It is utterly without support that the Eleventh Amendment and the doctrine of sovereign immunity it embodies has ever been interpreted to deprive a court of jurisdiction to grant relief against government officials who are engaged in conduct that is forbidden by their sovereign. On the contrary, the Supreme Court has repeatedly and consistently exercised the power to

enjoin state officials from violating state law. Although the Court struggles mightily to distinguish some of the cases that foreclose its holding, this vain effort merely brings into stark relief the total absence of any affirmative support for its holding.

95. In Cory v. White, 457 U.S. 85 (1982), the Court thrice restated the settled rule that the Eleventh Amendment does not bar suits against state officers when they are "alleged to be acting against federal or state law."

96. By 1908, it was firmly established that conduct of state officials under color of office that is tortious as a matter of state law is not protected by the Eleventh Amendment. See Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 390-391 (1894); Poindexter v. Greenhow, 114 U.S. 270, 287 (1885); Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446, 452 (1883); Belknap v. Schild, 161 U.S. 10, 18 (1896) (same rule adopted for sovereign immunity of the United States); Stanley v. Schwalby, 147 U.S. 508, 518-519 (1893) (same); In Hopkins v. Clemson Agricultural College, 221 U.S. 636 (1911), the Court explained the relationship of these cases to the doctrine of sovereign immunity.

97. Immunity from suit is a high attribute of sovereignty -- a prerogative of the State itself -- which cannot be availed of by public agents when sued for their own torts. The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability for wrongs inflicted or injuries threatened.

98. Similarly, see in Johnson v. Lankford, 245 U.S. 541 (1918), the Court reversed the dismissal of an action against the bank commissioner of Oklahoma and his surety to recover damages for the loss of plaintiff's bank deposit, allegedly caused by the commissioner's failure to safeguard the business and assets of the bank in negligent or willful disregard of his duties under applicable state statutes. The Court explained that

the action was not one against the State.
99. To hold otherwise would be to assert, that whatever an officer does, even in contravention of the laws of the State, is state action, identifies him with it and makes the redress sought against him a claim against the State and therefore prohibited by the Eleventh Amendment. Surely an officer of a State may be delinquent without involving the State in delinquency, indeed, may injure the State by delinquency as well as some resident of the State, and be amenable to both.
100. Similarly, in Rolston v. Missouri Fund Commissioners, 120 U.S. 390 (1887), the Court rejected the argument that a suit to enjoin a state officer to comply with state law violated the Eleventh Amendment. The Court wrote: "Here the suit is to get a state officer to do what a statute requires of him. The litigation is with the officer, not the state." In Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894), the Court held that the Eleventh Amendment does not bar a suit alleging that a state officer has wrongfully administered a state statute. The Court awarded injunctive relief against state officers on the basis of both state and federal law. In Atchison, T. & S.F.R. Co. v. O'Connor, 223 U.S. 280 (1912), the Court held that a suit against state officers seeking recovery of taxes paid under duress was not against the State since a state statute required the recovery of wrongfully paid taxes. In Lankford v. Platte Iron Works Co., 235 U.S. 461 (1915), the Court assumed that the Eleventh Amendment would not bar a suit "to compel submission by the officers of the State to the laws of the State, accomplishing at once the policy of the law and its specific purpose," at 471, but rejected the appellees' construction of the state statute. See also Farish v. State Banking Board of Okla., 235 U.S. 498 (1915); American Water Softener Co. v. Lankford, 235 U.S. 496 (1915). In Martin v. Lankford, 245 U.S. 547 (1918), the Court stated that the case was not barred by the Eleventh Amendment since the claim "is based, as we have seen, upon the tortious conduct of Lankford, not in exertion of the state law but in violation of it. The reasoning of

Johnson v. Lankford, 245 U.S. 541 (1918),] is therefore applicable and the conclusion must be the same, that is, the action is not one against the State, and the District Court erred in dismissing it for want of jurisdiction on that ground." at 551. While it is true, that the Martin Court went on to hold that there was no federal diversity jurisdiction over the case, it cannot be denied that the majority today repudiates the reasoning of Martin. While it is true that Johnson sought only damages, but the holding of that case, that the action was not barred by the Constitution since it alleged conduct in violation of state law, is utterly at odds with the Court's decision in Pennhurst. Surely the Court cannot mean to rely on a distinction between damages and injunctive relief, for it states: "A federal court's grant of relief against state officers on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law....We conclude that Young and Edelman are inapplicable in a suit against state officials on the basis of state law." Awarding damages for a violation of state law by state officers acting within their authority is inconsistent with the majority's position that only a need to vindicate federal law justifies the lifting of the Eleventh Amendment bar. If an order to pay damages for wrongful conduct against a state officer is not against the State for purposes of the Eleventh Amendment, an additional order in the form of an injunction telling the officer not to do it again is no more against the State. It cannot be doubted that the Pennhurst decision overrules Johnson. Finally, as for O'Connor, while it involved an allegation of unconstitutional action, that allegation was insufficient to lift the bar of the Eleventh Amendment because the complaint sought retroactive relief. It was the fact that relief was authorized by state law that defeated the Eleventh Amendment claim in O'Connor. See 223 U.S., at 287.

101. Significantly, this rule was expressly reaffirmed in a case decided by the Supreme Court in the same Term as Ex parte Young and published in the same volume of the United States

Reports. The appellants in Scully v. Bird, 209 U.S. 481 (1908), brought a diversity suit seeking injunctive relief against the dairy and food commissioner of the State of Michigan, on the ground that "under cover of his office" he had maliciously engaged in a course of conduct designed to ruin plaintiffs' business in the State. The Circuit Court dismissed the complaint on Eleventh Amendment grounds. On appeal, the plaintiffs contended that the Eleventh Amendment "does not apply where a suit is brought against defendants who, claiming to act as officers of the State, and under color of a statute which is valid and constitutional, but wrongfully administered by them, commit, or threaten to commit, acts of wrong or injury to the rights and property of the plaintiff, or make such administration of the statute an illegal burden and exaction upon the plaintiff." Ibid. This Court agreed. It noted that the complaint alleged action "in dereliction of duties enjoined by the statutes of the State," and concluded that it was "manifest from this summary of the allegations of the bill that this is not a suit against the State." Id., at 490.

102. To further illustrate: Cases construing the sovereign immunity of the Federal Government also hold that conduct by federal officers forbidden by statute is not shielded by sovereign immunity even though the officer is not acting completely beyond his authority. See Land v. Dollar, 330 U.S. 731 (1947); Ickes v. Fox, 300 U.S. 82 (1937); Work v. Louisiana, 269 U.S. 250 (1925); Santa Fe Pacific R. Co. v. Fall, 259 U.S. 197 (1922); Payne v. Central Pacific R. Co., 255 U.S. 228 (1921); Waite v. Macy, 246 U.S. 606 (1918).

103. Finally, in Greene v. Louisville & Interurban R. Co., 244 U.S. 499 (1917), and its companion cases, Louisville & Nashville R. Co. v. Greene, 244 U.S. 522 (1917); Illinois Central R. Co. v. Greene, 244 U.S. 555 (1917), the plaintiffs challenged the conduct of state officials under both federal and state law. The Court, citing, inter alia, Young and Clemson, held that the Eleventh Amendment did not bar injunctive relief on the basis of state law, noting that the plaintiffs' federal claim

was sufficiently substantial to justify the exercise of pendent jurisdiction over plaintiffs' state-law claims, and that since violations of federal and state law had been alleged, it was appropriate for the federal court to issue injunctive relief on the basis of state law without reaching the federal claims, despite the strictures of the Eleventh Amendment. In short, the Greene Court approved of precisely the methodology employed by the Court of Appeals in the Pennhurst case.

104. In addition, the rejection is unanimous of the argument that the Eleventh Amendment bars claims based on state officers' violations of federal statutes in Ray v. Atlantic Richfield Co., 435 U.S. 151, 156, n. 6 (1978)

105. In sum, a century and a half of the Supreme Court's Eleventh Amendment jurisprudence has established the following: A suit alleging that the official had acted within his authority but in a manner contrary to state statutes was not barred because the Eleventh Amendment prohibits suits against States; it does not bar suits against state officials for actions not permitted by the State under its own law. The sovereign could not and would not authorize its officers to violate its own law; hence an action against a state officer seeking redress for conduct not permitted by state law is a suit against the officer, not the sovereign. Ex parte Young concluded in explicit a fashion as possible that unconstitutional action by state officials is not action by the State even if it purports to be authorized by state law, because the Federal Constitution strikes down the state-law shield. In the tort cases, if the plaintiff proves his case, there is by definition no state-law defense to shield the defendant. Similarly, when the state officer violates a state statute, the sovereign has by definition erected no shield against liability. These precedents make clear that there is no foundation for the contention that the Supreme Court embraced -- that Ex parte Young authorizes injunctive relief against state officials only on the basis of federal law. To the contrary, Young is as clear as a bell: the Eleventh Amendment does not apply where there is no state-law shield. That simple principle

should have controlled the court's decision in Pennhurst.

106. The Siler case, cited with approval by Justice Brandeis in Ashwander, employed a remarkably similar approach to that used by the Court of Appeals in the Pennhurst case. A privately owned railroad corporation brought suit against the members of the railroad commission of Kentucky to enjoin the enforcement of a rate schedule promulgated by the commission. The Federal Circuit Court found that the schedule violated the plaintiff's federal constitutional rights and granted relief. The Supreme Court affirmed, but it refused to decide the constitutional question because injunctive relief against the state officials was adequately supported by state law. The Court held that the plaintiff's claim that the schedule violated the Federal Constitution was sufficient to justify the assertion of federal jurisdiction over the case, but then declined to reach the federal question, deciding the case on the basis of state law instead:

107. "Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons. In this case we think it much better to decide it with regard to the question of a local nature, involving the construction of the state statute and the authority therein given to the commission to make the order in question, rather than to unnecessarily decide the various constitutional questions appearing in the record." Siler v. Louisville & Nashville R. Co., 213 U.S. 175, 193 (1909).

108. In Siler the Supreme Court decided the case on state-law grounds, even though it acknowledged that "[in] this case we are without the benefit of a construction of the statute by the highest state court of Kentucky, and we must proceed in the absence of state adjudication upon the subject." 213 U.S., at 194.

109. In addition, the Supreme Court has routinely applied the Siler rule in cases upholding injunctive relief on the basis of state law against municipal officials, see Hillsborough v.

Cromwell, 326 U.S. 620, 629 (1946); Cincinnati v. Vester, 281 U.S. 439, 448-449 (1930); Risty v. Chicago, R.I. & P.R. Co., 270 U.S. 378 (1926); Bohler v. Callaway, 267 U.S. 479, 489 (1925); Lincoln Gas & Electric Light Co. v. City of Lincoln, 250 U.S. 256, 268-269 (1919); and in cases in which the plaintiffs were not held to be entitled to the relief they sought, see Schmidt v. Oakland Unified School Dist., 457 U.S. 594 (1982) (per curiam); Railroad Comm'n of California v. Pacific Gas & Electric Co., 302 U.S. 388, 391 (1938); United Fuel Gas Co. v. Railroad Comm'n of Ky., 278 U.S. 300, 307 (1929); Waggoner Estate v. Wichita County, 273 U.S. 113, 116 (1927); Chicago Great Western R. Co. v. Kendall, 266 U.S. 94, 97-98 (1924); Ohio Tax Cases, 232 U.S. 576, 586-587 (1914); Louisville & Nashville R. Co. v. Garrett, 231 U.S. 298, 303-304 (1913). Numerous other cases have been decided by the Supreme Court and have cited Siler as a statement of the law regarding pendent jurisdiction. See, Aldinger v. Howard, 427 U.S. 1, 7 (1976); Florida Lime and Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73, 81, n. 7 (1960); Hurn v. Oursler, 289 U.S. 238, 243-245 (1933

110. In Hagans v. Lavine, 415 U.S. 528 (1974), the Supreme Court quoted from the Siler opinion and noted that the "Court has characteristically dealt first with possibly dispositive state law claims pendent to federal constitutional claims." 415 U.S., at 546. It added:

111. "Numerous decisions of this Court have stated the general proposition endorsed in Siler -- that a federal court properly vested with jurisdiction may pass on the state or local law question without deciding the federal constitutional issues -- and have then proceeded to dispose of the case solely on the nonfederal ground. See, Hillsborough v. Cromwell, 326 U.S. 620, 629-630 (1946); Waggoner Estate v. Wichita County, 273 U.S. 113, 116-119 (1927); Chicago G.W.R. Co. v. Kendall, 266 U.S. 94 (1924); United Gas Co. v. Railroad Comm'n, 278 U.S. 300, 308 (1929); Risty v. Chicago, R.I. & P.R. Co., 270 U.S. 378, 387 (1926). These and other cases illustrate in

practice the wisdom of the federal policy of avoiding constitutional adjudication where not absolutely essential to disposition of a case."

112. It is especially odd for the Supreme Court to have repudiated settled law because changes in our social fabric favor limitation rather than expansion of sovereign immunity. The concept that the sovereign can do no wrong and that citizens should be remediless in the face of its abuses is more a relic of medieval thought than anything else.

113. "Whether this immunity is an absolute survival of the monarchial privilege, or is a manifestation merely of power, or rests on abstract logical grounds, it undoubtedly runs counter to modern democratic notions of the moral responsibility of the State. Accordingly, courts reflect a strong legislative momentum in their tendency to extend the legal responsibility of Government and to confirm Maitland's belief, expressed nearly fifty years ago that, 'it is a wholesome sight to see "the Crown" sued and answering for its torts.'" Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 59 (1944) (Frankfurter, J., dissenting) (citation omitted).

114. In the even older decision of Poindexter v. Greenhow, 114 U.S. 270 (1885), the Supreme Court, after observing that "the distinction between the government of a State and the State itself is important, and should be observed," id., at 290, wrote: "This distinction is essential to the idea of constitutional government. To deny it or blot it out obliterates the line of demarcation that separates constitutional government from absolutism, free self-government based on the sovereignty of the people from that despotism, whether of the one or the many, which enables the agent of the State to declare and decree that he is the State; to say L'Etat c'est moi.' Of what avail are written constitutions whose bills of rights for the security of individual liberty have been written, too often, with the blood of martyrs shed upon the battlefield and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and

appointed to guard, defend, and enforce them; and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple, and naked...."Id., at 291.

115. This concept is further expounded upon in Gibbons, The Eleventh Amendment and State Sovereign Immunity: A Reinterpretation, 83 Colum. L. Rev. 1889 (1983).

116. In addition, in the following cases the Supreme Court held injunctive relief may issue against state officers on the basis of state law after explicitly rejecting their Eleventh Amendment defense: Rolston v. Missouri Fund Commissioners, 120 U.S. 390 (1887); South Carolina v. Wesley, 155 U.S. 542 (1895); Tindal v. Wesley, 167 U.S. 204 (1897); Scully v. Bird, 209 U.S. 481 (1908); Hopkins v. Clemson Agricultural College, 221 U.S. 636 (1911); Atchison T. & S.F.R. Co. v. O'Connor, 223 U.S. 280 (1912); Johnson v. Lankford, 245 U.S. 541 (1918); Martin v. Lankford, 245 U.S. 547 (1918); Greene v. Louisville & Interurban R. Co., 244 U.S. 499 (1917); Louisville & Nashville R. Co. v. Greene, 244 U.S. 522 (1917); Illinois Central R. Co. v. Greene, 244 U.S. 555 (1917).

117. Since the petitioners' position in Pennhurst applies also to federal sovereign immunity (indeed the principal case on which they rely, Larson, is a federal sovereign immunity case), the following additional cases -- which refused to apply sovereign immunity to suits against federal officers acting within the scope of their authority because the plaintiff had alleged that the officers had engaged in unlawful conduct -- are rejected:

Little v. Barreme, 2 Cranch 170 (1804); Wise v. Withers, 3 Cranch 331 (1806); Mitchell v. Harmony, 13 How. 115 (1852); Bates v. Clark, 95 U.S. 204 (1877); Belknap v. Schild, 161 U.S. 10 (1896); Sloan Shipyards Corp. v. United States Shipping Bd. Emergency Fleet Corp., 258 U.S. 549 (1922); Santa Fe Pacific R. Co. v. Fall, 259 U.S. 197 (1922); Philadelphia Co. v. Stimson, 223 U.S. 605 (1912); Land v. Dollar, 330 U.S., at 738.

118. Larson itself cites most of these cases with approval, and disapproves of none of them. But in its 1984 decision, the Supreme Court overruled them all. In fact, the Supreme Court repudiates the two-track analysis of Larson, since in Larson the Court stated that conduct which has been specifically prohibited by statute is not protected by sovereign immunity even if it is performed within the scope of the official's duties, yet in the 1984 decision of Pennhurst the Court held that even if an officer violates a statute, his conduct is protected by sovereign immunity.

119. With it's 1984 decision in Pennhurst , the Supreme Court overruled the following cases: Siler v. Louisville & Nashville R. Co., 213 U.S. 175 (1909), and its progeny, including Louisville & Nashville R. Co. v. Garrett, 231 U.S. 298 (1913); Davis v. Wallace, 257 U.S. 478 (1922); Chicago Great Western R. Co. v. Kendall, 266 U.S. 94 (1924); United Fuel Gas Co. v. Railroad Comm'n of Ky., 278 U.S. 300 (1929); Glenn v. Field Packing Co., 290 U.S. 177 (1933); Lee v. Bickell, 292 U.S. 415 (1934); Railroad Comm'n of California v. Pacific Gas & Electric Co., 302 U.S. 388 (1938). This is because until Pennhurst the law was thought to be well settled on this point. With all due respect to the court, I can not see how the Pennhurst case is either controlling or compelling.

120. From the 15th-century English common law to Larson and beyond, courts have never held that prohibited conduct can be shielded by sovereign immunity. That rule makes good sense -- since a principal cannot authorize unlawful conduct, such conduct is of necessity ultra vires.

There is no reason to abandon such a well-settled and sensible rule.

121. Finally, in this matter the court should note:

A. One can not use circular logic and maintain that to sue a state and/or its official one must claim a law is unconsitutional; and when one asserts that a law is unconstitutional or applied in an unconstitutional manner, one is required to name the state explicitly; however by explicitly naming the state, the suit is void because it is against the state and barred by the 11th Amendment. The truth and reality is that when one maintains that a law is unconstitutional, the state is named, and the 11th Amendment does not apply. The only issue remaining is if the law and/or its application is in fact unconstitutional.

B. If anything only punitive damages are not applicable in accordance with the 11th Amendment but

a) In the instant case, this is not state money raised only by state taxes but rather federal money held by the state which it obtained by fraud upon the federal government and other funds seized unconstitutionally.

b) Punitive damages against the state treasury are in order for 14th Amendment violations. And, as the plaintiff is a heiniously aggreived citizen who filed In Propria Persona, it behooves the court to construe the complaint appropiately, so that the case can move forward.

c) And, as an In Propria Persona litigant, it is appropriate and precedented for the court to remove those claims that are legally improper and allow the case to move forward.

122. **What is the 'best interests of the children'** that the state is supposed to be concerned about? And, is this merely a state interest? Obviously, as advanced and rejected in Ex Parte Virginia, we see the basic agruement against permitting 14th Amendment rights to take precedence over 11th Amendment

rights: "The government created by the Constitution was not designed for the regulation of matters of purely local concern. The States required no aid from any external authority to manage their domestic affairs." In the instant case, can this basic arguement apply when so many federal laws come into play? The Parental Kidnapping Prevention Act, The Child Abuse Prevention Act, and The Uniform Child Custody Jurisdiction Act? Can this basic arguement apply when the state receives upwards of $2 Billion dollars in federal aid to help fund the state's enforcement of these acts of Congress that the State has committed in an unconstitutional manner? Are such acts of a local nature only? Furthermore, the very fabric of society is being erroded by such actions on the part of the States, as stated by no less than the President of the Untited States, who has authorized commissions to study the matter (Exhibits 12 & 13). Surely, if the President of the United States talks about these matters and issues executive orders that all government personnel should eliminate all discrimination against fathers; and do everything in their power to involve fathers in the lives of their children, then this is not a local issue, but a matter of national concern that belongs in federal court. These presidential commissions have printed findings, stating no less than that which every fathers' rights group has been saying for years (Exhibit 14). Yet, fathers groups have been attacked ad hominem, in contradiction to studies, statistics and facts: that the wanton removal of fathers is detrimental to the 'bests interests of the child'; that AFDC is a tremendous financial incentive to; and abused to; throw fathers out of the home and deny fathers all access to their children; and that denial of paternal access to the child is thee greatest cause of juvenile deliquency. All the defendants have acted in contradiction to the facts and executive orders and are all guilty of dereliction of duty, even the mother whose hatred or dispute with the father has blinded her, and allowed her to commit dastardly crimes against her own children. The end result of these actions are

published in the Dept. of Justice's report, "MISSING, ABDUCTED, RUN AWAY AND THROWN AWAY CHILDREN IN AMERICA", noted that approximately eighty-one percent (81%) of all children are abducted by parents because their CUSTODY AND VISITATION IS THWARTED by the other parent AND THEIR IS NO REDRESS IN THE COURTS AT ALL! Although New York State may feign the claim that New York State is in the nineteen percent (19%) other category, the facts indicate otherwise. Therefore, in the pursuit of justice and in dealing with a federal issue which has no redress in state court, this court has an obligation to correct and repair the damaged father-child relationship perpetrated by the defendants.

123. Furthermore, this court should note that several fathers groups from different states have filed human rights complaints with the United Nations, (Exhibit 24). Such an action, of such a magnitude can not be considered a local issue, but a pervasive national issue of premeditated, persecution of fathers and a denial of human rights. These complaints are made of the same claims as the instant case.

124. As to the so-called child support payments being an exorbitant assessment issued without equal protection of the laws and being enforced in a discriminatory and unreasonable manner:

(a) The custodial parent (the mother) did not provide proof of income while the non-custodial parent (the father) was ordered to provide proof of income. Harlow Zirkind was ordered by the family court to produce a sworn net worth statement, but Mazal Zirkind was never asked by the court to do such a thing; Harlow Zirkind's attorney, Carol Zimmerman, requested that Mazal Zirkind produce income verification and the court never enforced that request.

(b) That Mazal Zirkind is an AFDC recipient and did not have proofs of income on file as required by law with DSS or other agencies.

(c) That most of the financial tracking and prosecution

revolves around Title IV-D recipients such as Mazal Zirkind.

(d) That the child support award was excessive and based on non-existant income that the court confirmed did not exist but due to statutory requirements, the plaintiff had to be assessed as if he was earning that money. (Exhibit 15, Original Complaint).

(e) Harlow Zirkind is in the income range where the greater deviations from the guidelines do occur without justification.

(f) That the state keeps every penny over fifty dollars ($50-) in child support collected for a Title IV-D in Harlow Zirkind's case.

(g) That the state's accounting is persistently inconsistent with the court's order always inflating the amount owed. The amount owed is seventy-five dollars per week ($75-) (Exhibit 15, Original Complaint) which totals three hundred dollars ($300-) per month. Additional amounts are added to deduct from so-called arrears which were imposed mafioso style by a RETROACTIVE AWARD (Viola, another deadbeat 'dad', because he was all of a sudden ordered to pay twenty-five percent (25%) of his gross salary, which he did not have.). However, the Support Enforcement Unit's math has now adjudicated -- without any trial or hearing of any kind, certainly not in a trial of hearing in which the plaintiff-father was notified of -- that the plaintiff-father obligation is a full one hundred forty-three percent (143%) of his real obligation and therefore, NO DEDUCTIONS FROM ARREARS HAS OCCURRED, which spurred the issuance of the extortionery threat of drivers licence revoking (The court should note that no law was cited. If a new anti-father law has been passed clandestinely by the femo-nazi controlled legislature, we the people have the right to be informed.) which will be done without a trial or hearing at the arbitrary and whimsical discretion of the Support Enforcement Unit. All this in spite of statutory safeguards of impoverishing non-custodial parents with statutory limitations on child support assessments and

collections of arrears. In addition, this license revoking is totally unreasonable as it will make it impossible for the plaintiff to go to work and then he -- like millions of other similarly situated fathers -- will be unable to pay child support altogether for which the state will make attempts of incarceration. As the plaintiff has been making his payments in full on time, the threat of license revoking on the part of the State of New York constitutes:

I. Extortion

II. Coercion

III. Denial of due process

IV. Exorbitant Assessment

V. Unreasonable taxation

(i) These very same tactics were attempted by the co-conspirator, Mendel Epstein, that attempted to have the plaintiff fired from his job at Touro College so that he would be unable to pay support and then be incarcerated.

(j) It is expressly because of the multiple threats of incarceration that the plaintiff pays so-called child support.

(k) That the plaintiff is forced to pay his so-called child support by cash or postal money order only which gives the ability to SCU to alter records and keep improper records, which they do, and further force double and triple payments for the same bills.

(l) If seventy-five percent (75%) of ALL support is paid (Current Population Reports, US Bureau of the Census, Series P-23, No 173, 1989) and sixty-six percent (66%) of ALL support not paid by non-custodial fathers (The census reports' lack of non-custodial mothers not paying child support bespeak the nationwide sexist, anti-father discrimination involved in child support.) is due to the INABILITY TO PAY (US General Accounting Office Report, GAO/HRD-92-39FS, January 1992): THEN WHY ARE SO MANY MEN IN THE BRONX HOUSE OF DETENTION FOR NON-PAYMENT OF CHILD SUPPORT? Is it really because these men will not pay? Is it really because these men refuse to pay court ordered

child support? Or is it because these men CAN NOT PAY THE EXORBITANT TAXATION THAT IS WITHOUT REPRESENTATION! For any tax, levied in any form, even by court ordered assessment, if that levy does not permit due process, is not reasonable, and does not permit judicial reveiw, then that tax is no different than the 'Tea Tax' that sparked the Boston Tea Party and the American Revolution. Such a tax is contrary to the foundations of American law: That there can be no taxation without representation. This is exactly what family court does: It taxes without representation. New York State family court is not an exception but the paradigm of this extortion under the color of state law, under the guise of the noble cause of child support, and clothed in sinister, premeditated, over-assessments.

125. There is a wide expanse between error and malicious, premeditated, misadjudication. The former being a mistake from which a judge is afforded protection and immunity in order to function without fear of retaliation and the latter is a heinious crime, an abuse of power, public trust and process, and a malicious prosecution, from which their is no protection and a specific act of Congress was passed to deter such actions and assign liability and establish punitive measures for such crimes: 42 USC 5106a. Such are the actions of Judges Burstein, Rigler and Segal who should all be punished, personally, for their personal actions, as a specific act of Congress affords protection and punishment.

126. As a plaintiff, In Propria Persona, I understand that oral arguement is a right. Even if it is not a right, the plaintiff surely has the right to request an oral arguement, especially considering the complexity of the circumstances that occurred, the complex relationships in the conspiracy and the various legal arguements presented. "n2 Seven of these States also requested and received permission to argue the case orally at our hearing. Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and constructive. All viewpoints

on the issues have been fully developed, and this additional assistance has been most helpful to the Court." (South Carolina v. Katzenbach, Attorney General, 383 U.S. 301; 86 S. Ct. 803; 15 L. Ed. 2d 769 (1966). In addition, according to a copy of Judge Korman's rules that I received, it stated that all motions will be orally argued.

127. As to the issue of the civil courts being able to order a Jewish man to give his wife a GET, although this issue was raised under similar circumstances, in both Turner v. Turner, 192 So 2d 787; and Victor v. Victor, 17 Ariz 231; 866 P. 2d 899; the constitutionality of the issue of Ordering to give a Get and perform a religious ritual were not discussed because, as per procedure, a resolution of the matter was reached without having to decide the question of constitutionality of the judgement, as the judgement was in error, without authority and invalid for other reasons. However, the courts leaning was that such an action is unconstitutional.

128. Any and all pleadings, legal or logical arguements, facts, exhibits, etc. from this paper apply to all other defendants; and any and all pleadings, legal or logical arguements, facts, exhibits, etc. from any and all other papers apply to these defendants.

129. The court should also consider the relevance of 28 USC 1367(a) to the instant case.

Wherefore, the plaintiff, Harlow Zirkind, respectfully requests that this court:

1. Act as the guardian of civil and constitutional rights and not as the protectorate of corrupt and discriminatory public officials.

2. Deny the defendants answer and motion to dismiss and;

3. Conduct oral arguements and;

4. Strike the defendant's, Philip C. Segal, Motion to Dismiss because of fraud and misrepresentation and;

5. Sanction the defendant, Philip C. Segal, to the fullest extent of the law including the maximum fine imprisonment, and/or his attorney(s) for gross fraud and misrepresentation upon this court and;

6. Order that Philip C. Segal, reimburse the taxpayers for missappropriation of the Attorney General's time and services and;

7. Conduct a full, public hearing on the issue of the tampering of the records in this case before this court and;

8. Issue orders of discovery and set a tentative trial date OR,

9. In the alternative to setting a trial date, convene a trial by jury to determine if the circumstances and coincidences cited by the plaintiff warrant a 42 USC 1983 & 1985 action.

10. Any other relief the court deems appropriate.

Sworn to and signature executed before me this
21 th day of the month of November 1995.

_____/s/_____ _____/s/_____

County of HARLOW ZIRKIND
547 Wyndham Road

NOTARY Teaneck, NJ 07666
201-836-7557

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Exhibit 1 - OCA Press Release stating that judges must know things outside the law and setting up conferences to train judges therefor.
Exhibit 2 - OCA child support reports.
Exhibit 3 - US Census Bureau marital statistics and Center for Disease Control statistics.
Exhibit 4 - Spreadsheet analysis of exhibits 2 & 3.
Exhibit 5 - CSSA Evaluation Report
Exhibit 6 - Receipt for Bar Forum
Exhibit 7 – Michael Hizme's affidavit that goes with exhibit 6.
Exhibit 8 - NY Times article about Judge Rigler and the Schwartz GET.
Exhibit 9 - Affidavit from James Creque
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Exhibit 15 - Letter from Permanent Commission on Judicial Conduct about this information not being available under FOIA.
Exhibit 16 - Appellate Division decision about the Appeal dated March 8, 1995.
Exhibit 17 – Judge Spodek's decision mentioning a GET.
Exhibit 18 - Dr. Yale I Post on Letterhead of Ohel and Get Inc.
Exhibit 19 - Leaflet about Judge Freundlich.
Exhibit 20 - Letter from Barsch and Farber concerning Judge Horowitz.
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Exhibit 22 – Micheal Hizme's affidavit: Judge Horowitz, 'You People' and police needed a raised seal.
Exhibit 23 - SCU pay stub and pink slip.
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Exhibit 25 - Sidney Raphael's appeal
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Exhibit 29 - letter with receipt to Pro Se clerk's office about misfilings

Exhibit 15 – Mark Feldman's letter to Magistrate Pollak and Magistrate Pollak's ex-parte order both dated December 19, 1995. The court should note, that Magistrate's order was written in pen, in the bottom left hand corner of Mark Feldman's letter.

MARK A. FELDMAN
ATTORNEY AT LAW
1717 EAST 18TH STREET
BROOKLYN, NY 11229

December 15, 1995
Magistrate Cheryl Pollak
Eastern District of New York
225 Dacman Plaza East
Brooklyn, NY 11201

RE: Zirkind v. State of New York, et.al.
Index No. 95-CV-931 (ERK/JLC)

Dear Magistrate Pollak:

Please be advised that I am one of the numerous defendants in the above captioned action.

As per my conversation with Paula Marie Susi, I am writing to you today.

I have been informed that you have been assigned to preside over this matter and that a status conference has been scheduled for January 4, 1996.

Previously, this case was assigned to Magistrate Caden. Ms. Susi has informed me that it was Magistrate Caden's directive that no new motion papers should be filed in this action. Furthermore, a schedule was set up requiring Mr.

Zirkind to serve oppostion papers to the various motions by December 8, 1995 and all reply papers to be served by January 12, 1996. All the papers were to be submitted in Court on January 31, 1996.

Notwithstanding this clear directive, I am in receipt of a new motion by Mr. Zirkind for an immediate stay and injunction against me from proceeding to collect on a judgment of counsel fees awarded me by Judge Segal of the Family Court of Kings County. This award was affirmed by the Appellate Division of the State of New York, Second Department.

Ms. Susi has told me that she was not informed that any permission was given Mr. Zirkind to file any new motions and it was her understanding that in fact he was instructed not to do so.

Please inform me if the new motion will be accepted by the Court and if so what will be the date for my opposition papers and the return date of the motion.

Kindly respond to my letter as soon as possible in that I do not wish to be in default in responding to this new motion.

Very Truly Yours,
/s/
Mark A. Feldman

[Handwritten Order at Bottom of Letter]

Pursuant to Magistrate Judge Caden's order of June 13, 1995, directing that no new motions be filed by Mr. Zirkind without permission of the court and there being no indication that such permission was granted, respondents need not file an answer to Mr. Zirkind's motion dated Dec. 4, 1995 at this time. This issue will be dealt with at the status conference

scheduled for Jan. 4, 1996.

So Ordered
/s/
Cheryl Pollak USMJ
12/19/95

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

Harlow Zirkind, plaintiff -- appellant

APPEAL NO. 98-9461

- against - USD EDNY 95-CV-931 (ERK)

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas; Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does. -- defendants - - appellees

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US Constitution, Amendment XIV, [1868], Due Process and Equal Protection clauses.

42 USC 1983 Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 USC 1985 Conspiracy to violate civil rights.

18 USC 401. CONTEMPTS -- Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as -

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; .....

(3) Disobedience or resistance to its lawful writ, **process**, order, rule, decree, or command.

18 USC 402. Contempts constituting crimes

"Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, **if the act or thing so done be of such character as to constitute also a criminal offense under**

any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months...."

18 USC 1621. Perjury generally

Whoever -

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable

whether the statement or subscription is made within or without the United States.

18 USC 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both. .....

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made **irreconcilably contradictory declarations material** to the point in question in any proceeding before or ancillary to any court or grand jury. .....

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

Rule 56 (g) Summary Judgment. Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses

which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

28 USC 636 (e) (5) and the Federal Magistrate Act of 1979; "Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court .... A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of".

Federal Rule of Civil Procedure 73. Magistrate Judges; Trial by Consent and Appeal Options

(a) Powers; Procedure. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. section 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in
accordance with the requirements of Title 28, U.S.C. section 636(c)(7).

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This subdivision implements the broad authority of the 1979 amendments to the Magistrates Act, 28 U.S.C. section 636(c), which permit a magistrate to sit in lieu of a district judge and exercise civil jurisdiction over a case, when the parties consent. See McCabe, The Federal Magistrate Act of 1979, 16 Harv.J.Legis. 343, 364-79 (1979). In order to exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C section 636(c)(1) by the district court or courts he serves. **The only exception to a magistrate's exercise of civil jurisdiction, which includes**

the power to conduct jury and nonjury trials and decide dispositive motions, is the contempt power. A hearing on contempt is to be conducted by the district judge upon certification of the facts and an order to show cause by the magistrate. See 28 U.S.C. section 639(e). In view of 28 U.S.C. section 636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a "decision by the court" for the purposes of that rule and a "final decision of the district court" for purposes of 28 U.S.C. section 1291 governing appeals.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, ----

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, e.g., Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078 (2d Cir. 1977).

NOTES OF ADVISORY COMMITTEE ON RULES

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. the time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

Federal Rule of Civil Procedure 4.1 Service and Filing of Pleadings and Other Papers

NOTES OF ADVISORY COMMITTEE ON RULES

The new rule does not affect the reach of the court to impose criminal contempt sanctions. Nationwide enforcement of federal decrees and injunctions is already available with respect to criminal contempt: a federal court may effect the arrest of a criminal contemnor anywhere in the United States, 28 U.S.C. section 3041, and a contemnor when arrested may be subject to removal to the district in which punishment may be imposed. Fed. R. Crim. P. 40. Thus, the present law permits criminal contempt enforcement against a contemnor wherever that person may be found.

The effect of the revision is to provide a choice of civil or criminal contempt sanctions in those situations to which it applies.

(Amended by H.D. 100-40, Mar. 2, 1987, eff. Aug. 1, 1987; If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, Federal Practice and Procedure: Civil section 1334 (1969); 2A Moore, Federal Practice. par. 11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078 (2d Cir. 1977). This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

Subdivisions (b) and (c). These subdivisions restate the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and prescribing sanctions for violation of these obligations.

Although Rules 37(b)(2) and 37(d) have been silent as to award of expenses, courts have nevertheless ordered them on occasion. E.g., United Sheeplined Clothing Co. v. Arctic Fur Cap Corp., 165 F.Supp. 193 (S.D.N.Y.1958); Austin Theatre, Inc. v. Warner Bros. Pictures, Inc., 22 F.R.D. 302 (S.D.N.Y.1958). The provision places the burden on the

disobedient party to avoid expenses by showing that his failure is justified or that special circumstances make an award of expenses unjust. Allocating the burden in this way conforms to the changed provisions as to expenses in Rule 37(a), and is particularly appropriate when a court order is disobeyed.

NLRB v. Warren Co., 350 U.S. 107 (1955), the Court held that the lower court had no discretion to withhold sanctions against a contemnor who violated subpoenas

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action; .....

(3) discouraging wasteful pretrial activities; ....

(5) facilitating the settlement of the case. ....

(b) Scheduling and Planning.

(2) to file motions; and ....

The scheduling order may also include ....

(6) any other matters appropriate in the circumstances of the case.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues, including *the elimination of frivolous claims or defenses;* ....

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence; ....

(5) the appropriateness and timing of summary adjudication under Rule 56; ....

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action. ....

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(Amended by H.D. 100-40, Mar. 2, 1987, eff. Aug. 1, 1987; H.D. 103-74, Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES

1983 AMENDMENT

Introduction

... However, although scheduling and pretrial conferences are encouraged in appropriate cases, they are not mandated. ...

Discussion

A scheduling conference may be requested either by the judge, a magistrate when authorized by district court rule, or a party within 120 days after the summons and complaint are filed. If a scheduling conference is not arranged within that time and the case is not exempted by local rule, a scheduling order must be issued under Rule 16(b), after some communication with the parties, which may be by telephone or mail rather than in person. The use of the term "judge" in subdivision (b) reflects the Advisory Committee's judgment that it is preferable that this task should be handled by a district judge rather than a magistrate, except when the magistrate is acting under 28 U.S.C. section 636(c). While personal supervision by the trial judge is preferred, the rule, in recognition of the impracticality or difficulty of complying with such a requirement in some districts, authorizes a district by local rule to delegate the duties to a magistrate. In order to formulate a practicable scheduling order, the judge, or a magistrate when authorized by district court rule, and attorneys are required to develop a timetable for the matters listed in Rule 16(b)(1)-(3). As indicated in Rule 16(b)(4)-(5), the order may also deal with a wide range of other matters. The rule is phrased permissively as to clauses (4) and (5), however, because scheduling these items at an early point may not be feasible or appropriate. Even though subdivision (b) relates only to scheduling, there is no reason why some of the procedural matters listed in Rule 16(c) cannot be addressed at the same time, at least when a scheduling

conference is held.

Item (3) deals with the problem of procrastination and delay by attorneys in a context in which scheduling is especially important - discovery. Scheduling the completion of discovery can serve some of the same functions as the conference described in Rule 26(f).

Item (4) refers to setting dates for conferences and for trial. Scheduling multiple pretrial conferences may well be desirable if the case is complex and the court believes that a more elaborate pretrial structure, such as that described in the Manual for Complex Litigation, should be employed. On the other hand, only one pretrial conference may be necessary in an uncomplicated case.

As long as the case is not exempted by local rule, the court must issue a written scheduling order even if no scheduling conference is called. The order, like pretrial orders under the former rule and those under new Rule 16(c), normally will "control the subsequent course of the action." See Rule 16(e). After consultation with the attorneys for the parties and any unrepresented parties - a formal motion is not necessary - the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension. Since the scheduling order is entered early in the litigation, this standard seems more appropriate than a "manifest injustice" or "substantial hardship" test. Otherwise, a fear that extensions will not be granted may encourage counsel to request the longest possible periods for completing pleading, joinder, and discovery. Moreover, changes in the court's calendar sometimes will oblige the judge or magistrate when authorized by district court rule to modify the scheduling order. ....

Clause (6) acknowledges the widespread availability and use of magistrates. The corresponding provision in the original rule referred only to masters and limited the function of the reference to the making of "findings to be used as evidence" in a case to be tried to a jury. **The new text is not limited and broadens the potential use of a magistrate to that permitted by the Magistrate's Act.**

Rule 16(c)(10) authorizes the use of special pretrial procedures to expedite the adjudication of potentially difficult or protracted cases. Some district courts obviously have done so for many years. See Rubin, The Managed Calendar: Some Pragmatic Suggestions About Achieving the Just, Speedy and Inexpensive Determination of Civil Cases in Federal Courts, 4 Just. Sys. J. 135 1976).
Clause 10 provides an explicit authorization for such procedures and encourages their use. No particular techniques have been described; the Committee felt that flexibility and experience are the keys to efficient management of complex cases. Extensive guidance is offered in such documents as the Manual for Complex Litigation.

The rule simply identifies characteristics that make a case a strong candidate for special treatment. The four mentioned are illustrative, not exhaustive, and overlap to some degree. But experience has shown that one or more of them will be present in every protracted or difficult case and it seems desirable to set them out. See Kendig, Procedures for Management of Non-Routine Cases, 3 Hofstra L.Rev. 701 (1975).

Subdivision (f); Sanctions. Original rule 16 did not mention the sanctions that might be imposed for failing to comply with the rule. However, courts have not hesitated to enforce it by appropriate measures. See, e.g., Link, v. Wabash R. Co., 370 U.S. 628 (1962) (district court's

dismissal under Rule 41(b) after plaintiff's attorney failed to appear at a pretrial conference upheld); Admiral Theatre Corp. v. Douglas Theatre, 585 F.2d 877 (8th Cir.1978) (district court has discretion to exclude exhibits or refuse to permit the testimony of a witness not listed prior to trial in contravention of its pretrial order).

To reflect that existing practice, and to obviate dependence upon Rule 41(b) or the court's inherent power to regulate litigation, cf. Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197 (1958), **Rule 16(f) expressly provides for imposing sanctions on disobedient or recalcitrant parties, their attorneys, or both in four types of situations. Rodes, Ripple & Mooney, Sanctions Imposable for Violations of the Federal Rules of Civil Procedure 65-67, 80-84, Federal Judicial Center (1981). Furthermore, explicit reference to sanctions reenforces the rule's intention to encourage forceful judicial management.**

RULE 16(f) INCORPORATES PORTIONS OF RULE 37(b)(2), WHICH PRESCRIBES SANCTIONS FOR FAILING TO MAKE DISCOVERY. THIS SHOULD FACILITATE APPLICATION OF RULE 16(f), SINCE COURTS AND LAWYERS ALREADY ARE FAMILIAR WITH THE RULE 37 STANDARDS. AMONG THE SANCTIONS AUTHORIZED BY THE NEW SUBDIVISION ARE: PRECLUSION ORDER, STRIKING A PLEADING, STAYING THE PROCEEDING, DEFAULT JUDGMENT, CONTEMPT, AND CHARGING A PARTY, HIS ATTORNEY, OR BOTH WITH THE EXPENSES, INCLUDING ATTORNEY'S FEES, CAUSED BY NONCOMPLIANCE. THE CONTEMPT SANCTION, HOWEVER, IS ONLY AVAILABLE FOR A VIOLATION OF A COURT ORDER. THE

REFERENCES IN RULE 16(f) ARE NOT EXHAUSTIVE.

As is true under Rule 37(b)(2), the imposition of sanctions may be sought by either the court or a party. In addition, the court has discretion to impose whichever sanction it feels is appropriate under the circumstances. Its action is reviewable under the abuse-of-discretion standard. See National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976).

1993 AMENDMENT

This subdivision, as well as subdivision (c)(8), also is revised to reflect the new title of United States Magistrate Judges pursuant to the Judicial Improvements Act of 1990.

NYS Law -- PENAL LAW

Section 210.00. Perjury and related offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

2. "Swear" means to state under oath. .....

4. "Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public

servant to whom it is or might be submitted.

5. "Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true.

7. "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

Section 210.05. Perjury in the third degree.

A person is guilty of perjury in the third degree when he swears falsely.

Perjury in the third degree is a class A misdemeanor.

Section 210.10. Perjury in the second degree.

A person is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions,
and (c) material to the action, proceeding or matter involved.

Perjury in the second degree is a class E felony.

Section 210.15. Perjury in the first degree.

A person is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

Section 210.20. Perjury; pleading and proof where inconsistent statements involved.

Where a person has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, where the circumstances are such that each statement, if false, is perjuriously so, and where each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the people to establish specifically which of the two statements is the false one does not preclude a prosecution for erjury, and such prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, without designating either, charge that one of them is false and perjuriously made.

2. The falsity of one or the other of the two statements may be established by proof or a showing of their irreconcilable inconsistency.

3. The highest degree of perjury of which the defendant may be convicted is determined by hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the

two statements, the defendant may be convicted of the lesser degree at most.

Section 210.30. Perjury; no defense.

It is no defense to a prosecution for perjury that: .....

2. The defendant mistakenly believed the false statement to be immaterial; or

3. The oath was administered or taken in an irregular manner or that the authority or jurisdiction of the attesting officer who administered the oath was defective, if such defect was excusable under any statute or rule of law.

Section 210.35. Making an apparently sworn false statement in the second degree.

A person is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto.

Making an apparently sworn false statement in the second degree is a class A misdemeanor.

Section 210.40. Making an apparently sworn false statement in the first degree.

A person is guilty of making an apparently sworn false statement in the first degree when he commits the crime of making an apparently sworn false statement in the second degree, and when (a) the written instrument involved is one

for which an oath is required by law, and (b) the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and (c) such false statement is material to the action, proceeding or matter involved.

Making an apparently sworn false statement in the first degree is a class E felony.

Section 210.45. Making a punishable false written statement.

A person is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable.

Making a punishable false written statement is a class A misdemeanor.

Section 210.50. Perjury and related offenses; requirement of corroboration.

In any prosecution for perjury, except a prosecution based upon inconsistent statements pursuant to section 210.20, or in any prosecution for making an apparently sworn false statement, or making a punishable false written statement, falsity of a statement may not be established by
the uncorroborated testimony of a single witness.

SUBJECT MATTER AND APPELLATE JURISDICTION

Subject matter jurisdiction in district court with citation to applicable statutory provisions and relevant facts. Basis for jurisdiction in Court of Appeals.

This appeal is from the final judgment and corrected judgment of 95-CV-931 (ERK), rendered by the US District Court judge, the Honorable Edward R. Korman, in US District Court, 2nd Circuit, the Eastern District of NY. The final judgment was filed by the clerk of the court on January 9, 1997 and the corrected order was filed by the clerk on January 24, 1997. Said judgment disposed of all claims with respect to all parties. The appellant filed a Notice of Appeal by US Mail with the district court on January 15, 1997. However, the docketing sheets state the Notice of Appeal was filed Jan. 22, 1997. The Pro Se appellant filed said Notice of Appeal in order to preserve his rights. The Pro Se appellant was fully aware of an order from the US Court of Appeals barring the appellant from filing any appeals with the US Court of Appeals. Therefore concurrently, the appellant filed via US mail a Petition for Leave to Appeal with the US Court of Appeals. This Petition for Leave to Appeal was mailed on January 15th, 1997 and received on January 22, 1997. This petition was recently granted on or about November 2, 1998.

As this appeal is from a final order of a district court judge within the district of this court of appeals and was filed in a timely manner, therefore this court of appeals has jurisdiction over this appeal.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Contempt of Court Motions must be heard exclusively by a district court judge.
2. Parties committing fraud and misrepresentation in their papers to the court are:
    a) Guilty of Contempt of Court and;
    b) Liable for fines and **imprisonment** and;
    c) Their motions papers are to be stricken as said motion papers are made in bad faith.
3. Ex-parte communications with a magistrate or judge prejudice the case and warrant:
    a) Dismissal of the magistrate or judge from the case and;
    b) Striking of any order issued by said magistrate or judge.
4. Parties obstructing the due process of proceedings are:
    a) Guilty of Contempt of Court and;
    b) Liable for fines and **imprisonment** and;
    c) If said obstruction of justice swayed the court in favor of said parties motions, any such judgment must be re-evaluated de novo.
5. A motion for summary judgment and/or an accompanying affidavit based upon perjury is an affidavit in bad faith.
6. A motion for summary judgment made in bad faith must be stricken.

STATEMENT OF THE CASE

In brief, the nature of the case. The course of the proceedings. Disposition in lower court.

The instant case has its roots in a very corrupt NYS court whose officials and entire infrastructure is based upon corruption and heinous violations of due process which totally trample upon the 14th Amendment of the federal constitution and the very essence of democracy.

From the inception of the instant case in state court, all throughout the history of this federal case [95-CV-931] and companion cases, there has been multiple, numerous, heinous, grotesque violations of civil rights and deviations from procedure to abuse the courts as a tool of aggression and as a private religious inquisition.

This has been facilitated by corrupt and racist court officials on all levels.

The district court adopted the magistrate's recommendation and dismissed the case without prejudice, ordering the plaintiff to seek his state remedies. The magistrate's recommendation is based upon the summary judgment motions of the defendants. The summary judgment motions of the defendants are based upon perjury, acts of obstruction of justice and forging the Honorable Judge Edward R. Korman's signature to deny the plaintiff due process. Therefore, the magistrate's recommendation and the following judicial order which are based upon perjury, obstructions of justice and forging the district court judge's signature can not be upheld and should be stricken.

Statement of the facts relevant to the issues presented for

review with appropriate references to the record.

In the instant case, specifically, three (3) contempt of motions were filed during the course of the proceedings of 95-CV-931 [ERK]. Pursuant to the FRCP and other laws cited above, a magistrate may conduct preliminary hearings on the matter, but the matter must be heard and decided by a judge. Furthermore, pursuant to the FRCP and other laws cited above, should a contempt motion be found true, then any motion for summary judgment to dismiss is void and the case **MUST GO TO TRIAL**. There is no longer any discretion on the judge's part about dismissing the case. Once found guilty in a contempt of court hearing, **NO MATTER OF WHAT ISSUE**, the case must proceed to trial.

The reasoning for this law is quite simple. Once a party has been found guilty of any deception of any kind upon the court, then the veracity of all the matters within the court papers and all statements made are suspect. The truth is not known and must be decided upon trial.

In the instant case, due to the above mentioned corruption, several contempts of court motions were filed by the plaintiff due to outrageous actions of the defendants and their agents. These actions directly denied the plaintiff due process in violation of the law.

The magistrate did hear the arguments concerning these contempt motions. Lists of witnesses were submitted to the magistrate. The magistrate took no testimony, although she stated on the record that she would. In addition, as stated on the record, the magistrate did not accept all the evidence as certain evidence had to be accepted by the Honorable Judge Edward R. Korman during a hearing, by the Honorable Judge Edward R. Korman. In addition, it was made clear in written motion papers and on the record that the plaintiff was -- and

still is -- in possession of:

a) A copy of a document in the instant case [95-CV-931] with a **FORGED** signature of the Honorable Judge Edward R. Korman which was forged by the defendants and/or their agents to maliciously and premeditatedly violate due process. Since that incident, that plaintiff has accumulated numerous documents, all evidence of similar violations of due process.

b) A "media recording" contradicting the sworn [affirmed] statement of the defendant, the so-called *Rabbi* Hershel Kurzrock.

As was made clear in written motion papers by the plaintiff to the court and during hearings before the magistrate and, the magistrate conceded on the record, due to the nature of some of the evidence i.e. the forged signature of the Honorable Judge Edward R. Korman, that the only man able to decide such a matter would the Honorable Judge Edward R. Korman, himself.

In regards to the perjury of the so-called *Rabbi* Hershel Kurzrock in his sworn statement to the court in his motion to dismiss; the Magistrate stated in her recommendation to the court [dated Dec. 20, 1996, pg 36] that "a potential dispute of fact" does appear. However, the disputed fact of "arbitration has no connection to any proceeding before the court." As the defendant has made a misrepresentation upon the court, and that misrepresentation was in a sworn affidavit, then the so-called *Rabbi* **HERSHEL KURZROCK HAS COMMITTED PERJURY UPON THE COURT**. In addition, pursuant to FRCP 56(g), *Rabbi* Kurzrock's motion to dismiss should be striken in accordance with the law. It is crystal clear to anyone -- one need not be a legal beagle -- to understand the importance of Hershel Kurzrock's behavior

and contempt of court, due process and procedure.

If the Magistrate does not understand the relevance to the instant case, that is irrelevant to the law. If the Magistrate does not understand the relevance of the subject of the perjury to the instant case, that is also irrelevant to the law. The matter perjured, the contempt of court, does not even have to be of relevance to the case to be perjury. Once an individual is found to be a liar, once an individual is found to be a perjurer, once an individual is found to have abject contempt of court, then that individual's motion to dismiss is automatically void and the case involved must proceed to trial. It is not a matter of judicial discretion or decision if the case may proceed to trial: Pursuant to the above mentioned FRCP, the case must proceed to trial.

Although not necessary for appeal, the plaintiff will reiterate that which was stated before the district court as to the relevance of the perjury of the so-called *Rabbi* Hershel Kurzrock. Mr. Kurzrock stands accused of conspiring to a malicious prosecution, acts of extortion and other criminal behavior from which the plaintiff grievously suffered at the hands of Mr. Kurzrock. Mr. Kurzrock denied these allegations and made the statement that "He [Mr. Kurzrock] has definitely never met him [the plaintiff]." Thereby, Mr. Kurzrock attempted to absolve himself of any possibility of having engaged in extortion. Yet, the plaintiff is in possession of a media recording of at least one such meeting and several letters from Mr. Kurzrock demanding that the plaintiff meet with Mr. Kurzrock. In addition, by looking at the timing of Mr. Kurzrock's letters to the plaintiff and court dates and the filing dates of various court papers and other statements made by the defendants Mazal Zirkind and Mark A. Feldman, Esq. on the record and in writing; a textbook example of the notorious modus operandi of extortion by malicious prosecution by the so-called *Rabbis* Hershel

Kurzrock, Mendel Epstein, the Agunah cult -- Agunah Inc. and their agents becomes clear.

Of course, the major issue is: One given to lie is lying about other issues too. What else is Mr. Kurzrock -- a noted leader of the Agunah cult which is notorious for their perjury -- lying about in his motion papers? What are the other defendants lying about?

As the "Rabbi" of the defendant Mazal Zirkind, does the defendant, Mazal Zirkind, emulate her so-called "rabbi's" behavior? Has Mazal Zirkind committed perjury upon the court also?

Did Mark A. Feldman, Esq. legal attache of the Agunah cultist rabbi-defendant's so-called Rabbinical court and the defendant-rabbi's co-cultist commit perjury upon the court also?

These are all matters to be discussed and adjudicated at trial, by jury.

In spite of these extremely serious allegations, including but not limited to the forgery of the Honorable Judge Edward R. Korman's signature and the affirmative recommendation of the Magistrate Cheryl L. Pollak, for whatever reason, not one contempt of court motion was ever heard by the Honorable Judge Edward R. Korman during the instant case.

In addition, the magistrate had ex-parte communications with the defendants. One example of said ex-parte communications -- but not limited to this occurrence -- occurred on December 19, 1995, when the defendant Mark A. Feldman entered chambers and received an ex-parte order denying an injunction. This ex-parte order was challenged at a January 4, 1996 status conferenece, during which the magistrate conceded to said

facts on the record, when the appellant, Harlow Zirkind, stated such facts and contested the ex-parte order.

SUMMARY ARGUMENT

Because the contempt matters were never heard by a judge:

a) Crucial evidence was never submitted to the court.
b) Witnesses were not ordered to testify.
c) And, guilty parties were not ordered to face their accuser on the witness stand.

The above mentioned are fundamental precepts of due process and US law. That there were no contempt of court hearings, is an error of law and should be rectified by remanding the instant case to the District Court for a hearing on all contempt of court motions that were made before the court with trial pending the outcome of those hearings i.e. should the defendants be found guilty in the contempt hearing, then the case must proceed to trial.

In addition, as the magistrate had ex-parte communications with the defendants, the magistrate's recommendation is null and void by law; the decision rendered by the Honorable Judge Korman is likewise void since it is based upon a void recommendation and; by virtue of these ex-parte communications, the magistrate must be recused from the case.

One example of said ex-parte communications -- but not limited to this occurrence -- occurred on December 19, 1995, when the defendant Mark A. Feldman entered chambers and received an ex-parte order denying an injunction. This ex-parte order was challenged at a January 4, 1996 status conferenece, during which the magistrate conceded to said facts on the record, when the appellant, Harlow Zirkind, stated such facts and contested the ex-parte order.

That stating the contrary to irrefutable facts, especially in

matters in which a person was involved and had first hand knowledge of, is perjury. Perjury is a criminal offense which warrants criminal prosecution and is an obstruction of justice and a denial of due process.

That the forging of a judge's signature by a defendant and/or their agent so as to alter or destroy the filing of a plaintiff and tamper with the court's record is a denial of due process, an obstruction of justice, and a criminal act.

ARGUMENT

PART I

1) The defendants submitted motions for summary judgments with accompanying affidavits.
2) The affidavits contained documentable perjury.
3) A contempt of court motion was duly and timely filed concerning this perjury.
4) Upon the judge's referral, but not the consent of the parties, the magistrate reviewed the contempt matters.
5) The district court judge never heard the contempt motions.
6) The district court judge was obligated by law to hear the contempt motions himself and did not.
7) The hearings – by law – must include all evidence and testimony, including but not limited to the testimony of subpoenaed witnesses – as was requested of the court by the plaintiff in letters to the court.
8) Should the parties have been found guilty of perjury then:
   a) The motions for summary judgment had to be stricken.
   b) Sanctions are to be imposed.
   c) Criminal sanctions are to be imposed.

PART II

Certain defendants – a significant number of defendants -- engaged in obstruction of justice and had their agent(s) forge the Honorable Judge Edward R. Korman's signature in order to deny the plaintiff due process and the plaintiff's legal and lawful rights to a summary judgment.

1) The forging of the district court judge's signature in a summary judgment matter is fraud.
2) Summary judgments filed based upon fraud are to be

stricken.

Legal Basis for Part I

Pursuant to FRCP 55 & 56, the defendants submitted motions for summary judgments with accompanying affidavits which were either flawed and/or contained documentable perjury, misrepresentations and fraud. Pursuant to FRCP 11, 16 & 73 a contempt of court motion and motion to strike were duly and timely filed concerning these acts of perjury, fraud and flaws.

Although it is not clear that the magistrate's appointment on these matters was pursuant to FRCP 16 or FRCP 73, in either event, the contempt motions had to be heard by the district court judge. If the magistrate's appointment had been pursuant to FRCP 16, then the magistrate's jurisdiction and ability to issue sanctions as well as deal with contempt matters is limited to timing and discovery. [See the statute and notes from the Advisory Committee cited above. The sanctions pursuant to FRCP 16 are only for violations of court orders in the context of discovery.]

In the event of a FRCP 73 appointment, it should be noted that the appellant was never notified of the appointment nor consented thereto. Nevertheless, pursuant to 28 USC 636 and The Federal Magistrates Act of 1979, the district court judge must hear the contempt motions. [See the statutes and notes from the Advisory Committee above.]

If the appellant's claims were substantiated in a hearing, the defendants motions should have been striken as per FRCP 11, 16, 37 and 73. [See the citations of the Advisory Committee above, that FRCP 16(f) incorporates portions of rule 37(b)(2), which demonstrates that RULE 37 is used as the STANDARD for sanctions in all case. This includes the striking of motions and prison terms in addition to financial fines.] In addition, the parties guilty of perjury and

obstruction of justice are liable for sanctions, including criminal sanctions, in accordance with the law [Due Process Clause and Equal Protection laws of the 14th Amendment as well as 18 USC 401, 402, 1621 & 1623 which specifically provide for prison terms of six (6) months and fines of one thousand dollars ($1,000-) for perjury upon the court.]

Issuing sanctions is not a matter of discretion to the court. [See NLRB v. Warren Co., 350 U.S. 107 (1955), the Court held that the lower court had no discretion to withhold sanctions against a contemnor who violated subpoenas.]

In addition, once claims have been made of issues of contempt and fraud designed to cause unnecessary delay to the legal process; the onus is upon the accused parties to establish their innocence and that the accused has indeed not tried to delay the court. [See United Sheeplined Clothing Co. v. Arctic Fur Cap Corp., 165 F.Supp. 193 (S.D.N.Y.1958) and Austin Theatre, Inc. v. Warner Bros. Pictures, Inc., 22 F.R.D. 302 (S.D.N.Y.1958).] The defendants' never offered such proof, especially **NOT ONE DEFENDANT HAS DENIED HAVING FORGED OR HAVING HAD THEIR AGENT FORGE THE HONORABLE JUDGE EDWARD R. KORMAN'S SIGNATURE.** Therefore, the motions to dismiss can not stand and the case could not have been dismissed by law.

In addition, as 18 USC 402 [cited above] states, if the act of contempt would be contempt by state law definition in the state in which the act was committed, then the matter is considered a matter of contempt. Therefore the appellant has cited the NYS Penal Laws considering perjury. The appellant maintains that the defendants -- as charged in the contempt motions -- committed class A misdemeanors, as well as class D & E felonies. In addition, as per the above cited NYS Penal Laws and 18 USC 1623, some of the

defendants made irreconcilably contradictory declarations which is a form of perjury for which there is no defense as per NYS Penal Law 210.30. All perjurous statements made by the defendants were intended to mislead the public officers -- magistrate and district court judge -- from performing their official functions of adjudicating the case in accordance with the 14th Amendment.

That the district court judge never heard the contempt motions is an error of law and deviation of due process. The district court judge was obligated by law to hear the contempt motions himself and did not.

In addition, pursuant to the due process clause: the hearings must include all evidence and testimony, including but not limited to the testimony of subpoenaed witnesses – as was requested of the court by the plaintiff in letters to the court but were never allowed or ordered to testify. Mostly importantly, but not exclusively [not limited to] the forged signature of the district court judge was never resolved.

The appellant has never before heard of the outrageous act of a litigant forging the judge's signature to deny due process and therefore the appellant knows no mirror case to point to, but can only rely upon extrapolation of the laws of contempt and denial of due process. However, such an act is so outrageous a deviation of due process, that it appears to any citizen, an abject denial of due process and 14th Amendment violation.

As stated in the notes cited from the Advisory Committee on FRCP 11, the court has recognized that there can be reasons other than delay that may warrant contempt. See Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078 (2d Cir. 1977). Corruption, religious persecution and racism are but a few possibilities. Such actions have been labeled illegal and criminal, pursuant to 42 USC 1983 and 42 USC 1985. These have been long noted in the US law as reasons for abusing the courts as the defendants have and is well described in the appellant's state court papers, and especially the Memo Of Law to 95-CV-931. The defendants not only abused the lower state courts, but also the federal courts and have made a mockery of the justice system. There is no greater contempt of court. For this, the defendants should be severely punished with the maximum penalty possible.

In addition, the defendants' actions [forgery of the district court judge's signature] were done to manipulate and destroy the appellant's filings in the district court in regards to -- but not limited to -- the defendants' summary judgment motions as well as to cover-up the defendants acts of perjury in the defendants' motions to dismiss. And, as stated above, said acts of perjury would automatically strike the defendants' motions. To circumvent the legal and lawful striking of the

defendants' motions to dismiss pursuant to FRCP 11, the defendants simply had the district court judge's signature forged. This forging of the district court judge's signature is a further FRCP 11 violation, which in and of itself warrants the striking of the defendants' motions to dismiss and heavy contempt sanctions, including prison terms.

CONCLUSION:

Irrespective of the denials of due process and interference with the court's legal and lawful procedures, perpetrated by the appellees in the instant case; Due process and the Federal Rules of Civil Procedure were not adhered to by the court, during the proceedings of the instant case and the appellant's 14th Amendment rights were thereby denied. These deviations from due process can only be rectified by reopening the proceedings de novo and allowing the court to perform the court's legal and lawful duties in accordance with the law, by having the appropriate hearings -- judicial or otherwise -- on all matters brought before the court.

PLEA FOR RELIEF:

1. That the contempt motions be heard with full evidentiary hearings before the district court judge, the Honorable Edward R. Korman, which will include but not be limited to testimony of subpoenaed witnesses already requested of the court and other witnesses and evidence as necessary and;
2. The parties found guilty of contempt be punished in accordance with the law, including but not limited to:
   a) The striking of their motions, especially their motions to dismiss;
   b) Prison terms for those individuals found guilty of perjury and;
   c) The imposition of financial fines and;
   d) Proceeding to trial and;
   e) The written recommendation to the US Attorney's office for criminal prosecution for perjury and;
   f) Any other relief that the District Court will deem necessary
3. And, that the proceedings begin de novo, including but not limited to all injunctions and motions being heard anew and;
4. Any other relief that the US Court of Appeals deems necessary.

_____/s/_____ _____/s/____
Harlow Zirkind, Appellant NOTARY
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

DATED: 12/23/98

Exhibit 17 – NYS Family Court case V-8536-7/95 initiated by Judge Segal during the proceedings of USD 95-CV-931 EDNY

General Form 8
9/81

FAMILY COURT OF THE STATE OF NEW YORK
COURT OF KINGS

----------X

The Matter of a Proceeding under
Article 8 of the Family Court Act Docket# V-8536-7/95

Mazal Zirkind, petitioner

-against-

Harlow Zirkind, respondent

Violation of Order of Protection

----------X

TO THE FAMILY COURT:

The undersigned respectfully shows that:
Petitioner is Mazel Zirkind
By order of this court, dated 1/19/95, the (Petitioner) (Respondent) was directed to observ the following conditions of behavior: FOP.
(Upon information and belief) (Respondent) has failed to obey the Order of this Court in that: Petitioner alleges that the respondent has threatened to return to the home once her order of protection expires and he has been making false accusations against her with CWA and she wants the order extended another year.
No previous application has been made to any court or judge for the relief herein requested.

Wherefore (Petitioner) (Respondent) prays that the (Petitioner) (Respondent) be dealt with in accordance with Section of the Family Court Act.

Dated: 12/20/95

/s/
Mazal Zirkind

Form GFS 1/96

Docket NO: 1996 K-00147

----------X

The Matter of a Proceeding under Article 6 of the Family Court Act

TEMPORARY ORDER OF PROTECTION

Docket No. V-8536-7/95

Mazal Zirkind, petitioner
Date of Birth: 3-17-60

Ex Parte

-against-

Harlow Zirkind, respondent
Date of Birth: 3-26-59

----------X

Whereas a deteremination has been made in accordance with Article 6 of the Family Court Act, that a Temporary Order of Protection would serve the purpose of this act in this proceeding, therefore:

[02] That the respondent refrain from assault, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats or any criminal offense against Mazal Zirkind.

[99] Specify other conditions Respondent shall not interfer with Petitioner's custody of parties children.

It is further ordered that this order of protection remain in effect until March 7, 1996

Dated 1/15/96

/s/
Judge Family Court, P.C. Segal
Seal affixed

FAMILY COURT OF THE STATE OF NEW YORK
COURT OF KINGS

----------X

The Matter of ORDER

Docket# V-8536-7/95

Mazal Zirkind, petitioner

-against-

Violation of Order

Harlow Zirkind, respondent of Protection

----------X

On the court's motion it is

ORDERED that the document filed by respondent entitled "motion to strike; contempt of court; opposition papers; request to transfer to criminal court; cross-petition and demand for reversal of custody" is deemed an answer and counterclaim to the petition filed herein on December 20, 1995; and it is further

ORDERED that respondent's counterclaim is dismissed but without prejudice to a petition for modification of the existing custody/visitation order which h must include a representation that respondent is willing to cooperate with the forensic psychological evaluation ordered by the court on August 19, 1993; and it is further

ORDERED that respondent's application for a trial by jury in this proceeding is denied; and it is further

ORDERED that respondent's application to transfer this proceeding to Criminal Court is denied.

ENTER,

/s/
J.F.C.

[There was neither date nor seal on this order:]

Exhibit 18 – Petitioner's New York State, Civil Rights Cases

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, plaintiff COMPLAINT

- vs -

Judge Micheal Ambrosio, Judge Philip C. Segal, Mark A. Feldman, Esq. Mazal Zirkind and Rivke Haut, a.k.a. Renee Haut, President of Agunah Inc., Bernadette Cadore, Dept of Social Services, defendants

----------X

PLAINTIFF DEMANDS TRIAL BY JURY

PARTIES

PLAINTIFF:

Harlow Zirkind, a.k.a. Givon Zirkind, with a residence at 870 W. 181st Street, Apt. 37, NYC, NY 10033 is the plaintiff.

DEFENDANTS:

Judge Micheal Ambrosio, doing business at 283 Adams St., Brooklyn, NY is a defendant.

Judge Philip C. Segal, residing at 209 Strattford Road, Brooklyn, NY 11218 is a defendant.

Mark A. Feldman, Esq. doing business at 1717 East 18th Street, Brooklyn, NY 11219 is a defendant.

Mazal Zirkind residing at 652 Lefferts Boulevard, Brooklyn, NY 11203 is a defendant.

Renee Haut a.k.a. Rivke Haut, President of Agunah Inc. residing at and operating Agunah Inc. from 852 East 13th St., Brooklyn, NY 11230 is a defendant.

Bernadette Cadore, Dept. of Social Services Bernadette Cadore, Family Unit Worker, initiator of support proceedings and representing the Commissioner of Social Services, Department of Social Services of New York City and the Human Resources Administration of New York City is a defendant with a serviceable address located at: The Office of Legal Affairs, Human Resources Administration, City of

New York, 220 Church Street, Room 637, New York, New York 10013.

JURISDICTION

Jurisdiction is invoked under Civil Rights Laws 3, 10, 11, 12, 21, 70, 71, & 73, the Race Bias Laws as well as the New York State Constitution Articles I, Sections 2 & 9; Article IV, Sections 13 & 18; Article XIII, Section 1; NYS Social Service Law 29 & 397; US Constitution 1st & 14th Amendments.

VENUE

Although most of the defendants reside in Brooklyn, New York; the plaintiff resides in New York County and the Dept. of Social Services has offices in NYC and the plaintiff seeks change of Venue because: As Judge Segal is accused in the instant case of taking bribes from Mark A. Feldman, Esq., with monies supplied by Agunah Inc. -- a charity located in Brooklyn, NY -- and based upon information and belief, Agunah Inc. has bribed numerous public officials in Brooklyn, including but not limited to judges; it is fair to assume -- considering the history of the litigtants as described in detail in 95-CV-931 (ERK) USD EDNY; CA 3rd Cir. 95-8065; & CA 3rd Cir. 96-5725 -- that any trial conducted in Brooklyn, if any trial will be conducted at all, will be a mockery of justice at best and fixed hearings to cover up the well-known bribery and corruption of family court.

HISTORY

1) Since June 1, 1993, the plaintiff has been the victim of aggravated harassment by lawsuit, vexatious and malicious prosecutions, bribery of court officials in every court that the plaintiff has been persecuted by the defendants Mazal Zirkind, Mark A. Feldman, Esq. and Agunah Inc. And, the target of corrupt and bribed NYS officials, court officials, including judges. And, the target of well documented and publicized NYS public policies of discrimination.
2) In an attempt to seek redress, the plaintiff filed a lawsuit

in the USD EDNY, 95-CV-931 (ERK). The entire record of 95-CV-931 (ERK), including all evidence, transcripts, cross-motions, and any papers and pleadings are hereby incorporated by reference.

3) On Jan. 9, 1997, the Hon. Edward R. Korman issued an order (Exhibit 1) directing the plaintiff to raise his pendent state law claims in state court. The plaintiff has divided those claims into several individual lawsuits governing those issues. The instant lawsuit governs the injunction filed against a malicious and vexatious lawsuit initiated by Judge Philip C. Segal, and the other defendants on Dec. 20, 1995 while being defendants in the proceedings of 95-CV-931 (ERK) USD EDNY. A complete conflict of interest and abject act of abuse of process for the express purpose of denying the plaintiff his 14th Amendment rights in the Eastern District.
4) Furthermore, said court action commenced by Judge Philip C. Segal was a total farce and fiction of law. As explained later herein, especially but not limited to paragraph 11.
5) The court should note that in another vexatious and malicious prosecution [docket# O-5998/93; O-6410-93; V-8536-7/93] Judge Philip C. Segal issued an outrageous order against the plaintiff that was based upon no existing law. This part of the bribed Judge Segal's order was so ridiculous that it was overturned by the Appealate Division, appeal #95-1328, 95-1491, 95-1494, & 95-1497. The entire record of this appeal is hereby incorporated by reference.
6) Agunah Inc. is a corporation incorporated in Brooklyn, NY. Agunah Inc. while raising tax exempt funds is not registered with the NYS Attorney General's Charities Bureau (See Exhibit 2). In addition, Agunah Inc. is not filing the requisite income tax forms with IRS (See Exhibit 3) in derogation of IRS Code. Agunah Inc. is lead by Rivke Haut and the so-called "Rabbi" Mendel

Epstein. The group believes in Hellenistic Judaism, has a facade of orthodox Judaism while truly despising orthodox Judaism and the traditional *Torah* values. In addition, the group believes that it and its followers or anyone they can convince, may use any means to extort the performance of religious rituals, specifically the performance of the Jewish divorce ceremony. In addition, Agunahistim do not believe in the sanctity of the family, but rather in divorce upon any whim and that in derogation of the *Torah* and all sociological studies to the contrary; that fathers are not necessary for proper development of children. To this end, Agunah Inc. while not having a PAC (Political Action Committee) illegally lobbied for the NYS GET laws; promotes false child abuse accusations; malicious prosecutions in family court; beatings; mugging; extortionist and terrorist activities; finances attorneys -- such as Mark A. Feldman, Esq. -- to initiate and prosecute these malicious prosecutions; bribery of court officials including judges, psychologists, and social workers. The plaintiff has born the brunt of all of the above.

DOUBLE JEOPARDY

7) The court should be aware that the instant claims were raised in US District Court, Eastern District of New York, 95-CV-931 (ERK) USD EDNY. Upon the order of the Hon. Edward R. Korman, USDJ, the plaintiff is attempting to vindicate these rights and pendent state law claims in NYS court. However, the plaintiff has good reason and supporting evidence that the NYS courts will again not afford the plaintiff due process. At which time, the plaintiff will have exhausted all state remedies and again be forced to seek redress in the federal courts.
8) Not-with-standing, the plaintiff has petitioned to appeal the decision of the Hon. Edward R. Korman, USDJ as Cheryl L. Pollak, USMJ presiding, did not call the plaintiff's witnesses, nor force Citibank to comply with

the USMJ's Order and plaintiff's Notice to Produce the bank records of Citibank account #779133442, and Agunah Inc.'s bribery of state court officials.

9) Furthermore, the Magistrate in her recommendation, totally ignored federal and state reports proving public policies of discrimination by NYS and a public policy of denials of due process.

10) However, the plaintiff has neither recieved word that the plaintiff's district court appeal has been filed, nor that the plaintiff's petition for leave to appeal to the 2nd Circuit has been filed.

THE INSTANT VEXATIOUS LAWSUIT AND VIOLATIONS OF CIVIL RIGHTS

11) On December 20, 1995, Mazal Zirkind, the legal wife of the plaintiff, filed a petition in Brooklyn family court that was heard by Judge Philip C. Segal. (Docket #V8536-7/95, The entire record of family court docket #V8536-7-95 is hereby incorporated by reference. All claims made in the plaintiff's Counterclaim to V8536-7/95 are hereby incorporated and part and parcel of this Complaint.) The defendant stated in her petition that:
    a) The plaintiff is "*threatening* " to return to the marital residence after the expiration of an Order of Protection [which was issued by Judge Philip C. Segal without any trial or hearing of any kind for which Judge Segal received a $10,000- bribe from Mark A. Feldman, Esq. funded by Agunah Inc.].
    b) The plaintiff is filing false abuse accusations with CWA (the Child Welfare Administration).

12) The plaintiff responded to these bogus charges with a cross-motion and counterclaim. (See Exhibit 4). Therein, the plaintiff demanded trial by jury by right, expressly did not waive the plaintiff's right to trial by jury, and demanded as per statute (as cited and described in the Counterclaim) the transfer of said case to criminal court.

13) On January 5, 1996, Judge Segal issued an order denying the plaintiff's right to transfer to criminal court and trial by jury (See Exhibit 5). This is a clear violation of FCA 812(5); CRL 12; the NYS Constitution as cited above, and the 14th Amendment of the federal constitution.

14) As the plaintiff will prove during discovery, this was no error of law or fact, this was done because Judge Segal received a bribe from Mark A. Feldman, Esq. funded by Agunah Inc.

15) In addition, the plaintiff can prove that Judge Segal has a history of anti-Semitism against orthodox Jewish men congruent to the beliefs of Agunah Inc. and other clear malicious misadjudications and outrageous orders against orthodox Jewish fathers. [The list of witnesses and circumstances was submitted to the USD EDNY as part of 95-CV-931 (ERK).] Most notably, Hershel Muller & Rabbi Jacob Israel.

16) Therefore, the misadjudication by Philip C. Segal was also an act of race bias, religious extortion, coercion, a violation of the 1st Amendment of the federal Constitution, both the Free Exercise and Establishment clause and an act of treason as Philip C. Segal has taken an oath to uphold the federal Constitution and did not. [This oath includes the entire US Constitution, including the 14th Amendment.] This matter was eruditely elaborated in a RICO Complaint in C.A. 3rd Cir. 96-8065 which is hereby incorporated by reference and part and parcel of this Complaint.

EXCESS OF JURISDICTION

17) As explained at length in 95-CV-931 US EDNY [particularly in the plaintiff's Memorandum of Law], the Agunah cultists have a modus operandi of filing false abuse charges, securing bogus orders of protection, thereby throwing men out of their homes without cause; securing false psychological reports with malicious, unfounded and fraudulent recommendations that fathers

not be allowed to see their children and thereby usurping custody from fathers baselessly; all for the express purpose of religious hatred and extortion of Agunah cultist rituals.

18) Also, it is a well known and established fact that in tandem with the Agunah cult, family court is making ex-defacto divorces. Family court has no jurisdiction what-so-ever to make a divorce. Yet, family court on a regular basis, physically separates husband and wife -- as it did to the plaintiff which also includes a property settlement as the plaintiff being thrown out of his home all chattel instantaneously comes under the custody of the wife; fixes custody -- as it did to the plaintiff and fixes child support -- as it did to the plaintiff.

19) It is a well known fact of NYS Family Law that family court has no jurisdiction over married couples. In the case in question, the parents [the plaintiff and Mazal Zirkind] were and still are 100% married at the inception of all family court cases ever held by Philip C. Segal against the plaintiff and; family court by NYS FCA statutes has no jurisdicition over a married couple without referral from the divorce court of NYS Supreme court.

20) Therefore, Judge Philip C. Segal premeditatedly exceeded his jurisdiction in order to make a divorce in family court for the express purposes of religious hatred and extortion as well as aiding and abetting the Agunah cult.

21) As Philip C. Segal abused his position and knowingly aided and abetted the Agunah cult, Philip C. Segal, exceeded his jurisdiction and committed statutory treason.

CRIMINAL VIOLATIONS BY RENEE HAUT, PRESIDENT AGUNAH INC.

22) Agunah Inc. provided the funding for the brribery of Judge Segal and Mark A. Feldman, Esq. to prosecute this vexatious and malicious prosecution.

23) In addition, Agunah Inc. provides Mark A. Feldman, Esq.

with whatever funds he needs to bribe whomever is necessary to fix lawsuits against the plaintiff and other victims and targets of Agunah Inc. and Mendel Epstein.

CRIMINAL VIOLATIONS BY MARK A. FELDMAN, ESQ.

24) Mark A. Feldman, Esq. violated the New York State Civil Rights Law 70, by knowingly prosecuting a vexatious lawsuit and bribing the judge of the case.

25) The matter of bribery by Mark A. Feldman, Esq. is also a criminal violation of the NYS Penal Laws and pursuant to Judiciary Law 476 & 487, this court should report these criminal actions by Mark A. Feldman, Esq. to the NYS Attorney General for criminal prosecution and fine the defendants treble damages.

CRIMINAL VIOLATIONS BY MAZAL ZIRKIND

26) Pursuant to NYS Social Service Law [including but not limited to SSL 444 & 446] established and enacted in compliance with 42 USC 654 and the multi-billion dollars of federal aid to NYS; the identity of informants to CWA is confidential and can not be divulged. Therefore, the allegation made by Mazal Zirkind was a false child abuse accusation as it could not be proven by statute.

27) Furthermore, the plaintiff denies ever having made such accusations with CWA.

28) In addition the plaintff lives in NJ. Such complaints would have to have been made by long distance call which has to appear upon the plaintiff's long distance telephone bill and did not.

29) As Mazal Zirkind knowingly made false child abuse accusations, by statute her custody should be revoked and immediate reversal of custody to the non-custodial parent is in order. Philip C. Segal premeditatedly, maliciously and for the express purpose of religious hatered and extortion ignored this law.

VIOLATIONS OF DUE PROCESS BY JUDGE PHILIP C. SEGAL AND JUDGE MICHEAL AMBROSIO,

PERPETRATED BY BRIBERY, ANTI-SEMITISM AND THE ENFORCEMENT OF NYS PUBLIC POLICIES OF DISCRIMINATION WHICH CONSTITUTE STATUTORY TREASON

30) Chief Justice Micheal Ambrosio is fully aware of the unconsitutional actions and deviations from due process by Brooklyn Family Court.
   a) In the instant case, the plaintiff sent Micheal Ambrosio a copy of the Counterclaim and lettering advising Micheal Ambrosio that he is responsible for the unconstitutional actions of those under his supervision, namely Philip C. Segal. (See Exhibit 4 & 6).
   b) This was not the first letter ever sent by the plaintiff to Micheal Ambrosio of unconstitutional actions within Micheal Ambrosio's courthouse. The plaintiff sent Micheal Ambrosio numerous letters of many violations within his courthouse.
   c) Micheal Ambrosio himself bragged in Empire State Court Notes -- an official publication of the thoroughly corrupt NYS Office of Court Administration -- that the average court case in Brooklyn Family Court is handled in three minutes. Who can get justice by due process in three (3) minutes?
   d) Micheal Ambrosio was also fully aware of the rascism, religious hatred and religious persecution by former Brooklyn Family Court Judge Karen S. Burstein. Micheal Ambrosio did absolutely nothing about it.

31) The State of New York has a discriminatory policy against Orthodox Jews in general and Orthodox Jewish men particularly, especially fathers in divorce and family court. This is evidenced by the unconstitutional GET Laws (DLR 240, etc.) This matter was elaborated upon in 95-CV-931 USD EDNY and is explained in the

Columbia Journal of Law and Social Problems, New York Get Laws, A Constitutional Analysis, Vol 27, Number 1, Fall 1993. The entire article is hereby incorporated as part of this lawsuit [as it was of 95-CV-931 USD EDNY] and all the additions and amendments to the article made by the plaintiff in 95-CV-931 USD EDNY are hereby incorporated by reference.

32) The GET Laws violate the 1st Amendment of the federal constitution, both the free exercise and establishment clauses.

33) There is no law that requires gentiles to perform religious divorce ceremonies. Only the Orthodox and Chassidic Jews are forced by NYS law to perform religious divorce ceremonies by the GET law which affects Orthodox and Chassidic Jews only.

34) The actions of the New York State family courts are inherently sexist and discriminatory against fathers. This can be evidenced by statistical analysis of New York State reports (Report of the Chief Administrator of the Courts, Pursuant to Judiciary Law Section 216(5) as required by the Child Supports Standards Act) that are produced in accordance with federal statute in comparison with statistics produced by the US Census Bureau (Current Population Reports, Population Characteristics, Series P-20, No. 461) and the national Centers for Disease Control (US Dept of Health and Human Services, Centers for Disease Control and Prevention, Monthly Vital Statistics Report, Vol. 43, No. 9, Supplement, March 22, 1995, tables 18, 19 and 20).

35) Even though the State of New York and the family courts abuse the law of the "confidentiality of the children" as a smoke screen and McCarthyist and Stalinistic measure to hide corruption, fixing trials, manufacturing evidence, absconding with federal funds, thievery, kidnapping under the color of state law, prejudice, discrimination, bigotry and other violations of civil rights, the New York

State Compendium of Child Support which is produced on a yearly basis, shows that New York State is only awarding 3.6% of child support awards to fathers. Conversely, consistently, every year an average 90% of ALL child support awards are to women, which also means that 90% of ALL custody awards are to mothers, which means that 90% of all fathers are crazy, drug addicts, disabled or otherwise unfit parents.

36) For all intents and purposes, the State of New York awards maternal custody 100% of the time.

37) Three point six percent (3.6%) is so insignificant as to not be considered. In addition, this is a full two-thirds (2/3) below the national statistic as reported by the US Census Bureau and the national Centers for Disease Control (ibid.).

38) Such statistical analysis is proper and valid statistical analysis for circumventing 'privileged' information.

39) Data(base) analysis is the plaintiff's field and he is duly qualified to make this statement.

40) In addition, according to the national Center for Disease Control, the national average maternal custody award rate is seventy-two (72%); however New York State is awarding maternal custody on the average, ninety percent (90%) of the time; which is eighteen percent (18%) above the national average. Furthermore, if there is no prima facie right to custody [as is the current NYS law], then ninety percent (90%) maternal custody can not be considered by any stretch of the imagination as anything but 'no prima facie right to custody'.

    a) The New York State, Child Support Standards Act, Evaluation Project 1993 displays prejudice, discrimination, denials of due process, unequal protections under the laws and other improprieties among the support courts and the Dept. of Social Services:

        i) That mothers had sole custody in 96% of the

family court cases. Footnote 44 advances as conjecture an undocumented theory, which certainly does not explain the instant case.

ii) That two-thirds (2/3) of the custodial parents (women) did not provide proof of income while only half (1/2) of the non-custodial parents (men) did not provide proof of income. As in a related case where Harlow Zirkind [was sued by Mazal Zirkind and DSS] Harlow Zirkind was asked by the family court to produce a sworn net worth statement, but Mazal Zirkind was never asked by the court to do such a thing; Harlow Zirkind's attorney, Carol Zimmerman, requested that Mazal Zirkind produce income verification and the court never enforced that request. This is a violation of the Social Services Laws -- including but not limited to NYS SSL 29 -- enacted to conform to the conditions of federal grants pursuant to 42 USC 654 and other statutes as well as Civil Rights Law 3, 10 & 11 and the 14th Amendment.

iii) **That child support awards are excessive beyond the legal guidelines; putting non-custodial parents (fathers) into poverty; that the lower the income, the greater the deviations from the guidelines and that there is no justification for the deviations from the guidelines.**

iv) That the deviations as stated in the report were actually greater, but such cases were excluded from the report as "unique" cases that would have improperly skewed the report.

v) Indeed, the plaintiff [in the related family court case cited above] had documented the loss of significant income due to a loss of consulting clients from a part-time business that was in addition to the plaintiff's regular forty (40) hour a

week job. This loss of income occurred approximately three (3) months before the Brooklyn Family Court case began and approximately nine (9) months before the support hearings were commenced. In addition, the plaintiff had submitted copies of tax returns for the past five (5) years which indicated two years of unemployment or extremely low income: One year was only eight thousand five hundred dollars ($8,500-) for a family of five (5). In spite of the above, the plaintiff was told apologetically by the Hearing Examiner, Dorothy McCarrick, that even though he had lost the income and the loss was documented, even though the loss was in the past: The income would still have to be entered into the equation as per statute (Complaint 95-CV-931, Exhibit 15). HOWEVER, no mention was made about the statutory requirement to examine past tax returns to establish ability to pay. A clear violation of Civil Rights Law 3 & 8 as well as the Family Court Act.

b) Seventy-five percent (75%) of ALL child support is paid (Current Population Reports, US Bureau of the Census, Series P-23, No 173, 1989) and sixty-six percent (66%) of ALL support not paid by non-custodial fathers is due to the INABILITY TO PAY (US General Accounting Office Report, GAO/HRD-92-39FS, January 1992). This is not congruous with the rabid dog hunt of fathers for non-payment of child support by the State of New York and that only one mother in the history of NYS has ever been incarcerated for non-payment of child support while fathers are locked up every day.

41) As evidence submitted as part of the record of 95-CV-931 USD EDNY which has already been incorporated by reference, The NYS report, Report of the Chief

Administrator of the Courts January 1, 1992 - December 31, 1992, states on pgs. 157-164, that Brooklyn Family Court has a 100% conviction rate. This statistic in and of itself is most damaging and indicates a kangaroo court. It is even more damaging when it is known that according to the US Census Bureau report, NIS-1 & NIS-2 (National Incidence Study which are studies designed to monitor child abuse and child abuse reporting. These studies are prepared in conjunction, by Dept. of Health and Human Services, Children's Bureau, National Center for Child Abuse and Neglect.) 80% of all child abuse reports are unfounded and 54% of child abuse reports by Social Services and Child Protective Services are unfounded.

LEGISLATIVE INTENT OF THE CIVIL RIGHTS LAW

42) It is well established law that the States may not detract from the rights guaranteed by the federal Constitution, however the states may add to those rights.

43) The Civil Rights laws of New York State were enacted in parralellism to the federal Constitution, including but not limited to the 1st & 14th Amendment. And, that the same procedures, reasoning, ethics and guidelines apply to the NYS CRL as the 1st & 14th Amendments.

LIABILITY AND LEGAL OBLIGATIONS OF THE DEPT. OF SOCIAL SERVICES

44) While it is clear that the Dept. of Social Services has a long standing, well known and documented policy of discrimination against fathers, it is not clear that the Dept. of Social Services, Child Welfare Administration division participated in the malicious prosecution in question. Nor, is it clear that the Dept of Social Services violated the law and furnished the information, that Mazal Zirkind testified to.

45) However, irregardless, now that the Dept. of Social Services is aware of the false child abuse accusations

made by Mazal Zirkind, pursuant to SSL 29 & 397 as well as 42 USC 5106a, the onus is upon the Dept. of Social Services to prosecute Mazal Zirkind and demand the immediate reversal of custody to the father -- Harlow Zirkind.

46) It must be emphasized that the Dept. of Social Services has a documented discriminatory policy (evidenced above from NYS reports) in derogation of the law, of refusing to place children with fathers. The reason being that most fathers are not on public assistance and therefore the state does not reap the rewards of billions of dollars in federal grants when children are placed with fathers, especially fathers who work for a living. And, therefore, the Dept. of Social Services can not fund its unneeded bureaucracy.

Wherefore the plaintiff respectfully requests the following relief:

1. The immediate transfer and commencement in criminal court of the plaintiff's counterclaims submitted to Brooklyn family court and;
2. The written recommendation to the US Attorney's office for the criminal prosecution of civil rights violations by Micheal Ambrosio, Philip C. Segal, Mark A. Feldman and Rivke Haut and;
3. The written recommendation of the court to the Attorney General's office for the criminal prosecution of Mark A. Feldman, Esq. and Judge Philip C. Segal pursuant to Judiciary Law 487 and;
4. The written recommendation of the court to the Ethics Committee for the immediate impeachment of Judge Philip C. Segal and;
5. The written recommendation to the Bar for the immediate disbarment of Mark A. Feldman, Esq. and Philip C. Segal and;
6. The written recommendation to the District Attorney and/or the Attorney General for the criminal prosecution of Mazal Zirkind and Renee Haut;
7. That the Dept. of Social Services is to immediately begin a prosecution against Mazal Zirkind for filing false abuse charges and recommend that custody be reversed and given to the father, Harlow Zirkind and;
8. A fine of $250- from each defendant except the Dept of Social Services and;
9. The cost of this lawsuit and;
10. Twenty million dollars from each defendant in punitive damages except from the Dept. of Social Services and;
11. Any other relief deemed appropriated by the court.

Affirmed to me this 4th day of February, 1997

_____/s/_____ _____/s/_____

NOTARY

Harlow Zirkind
870 W. 181 St.
Apt. 37
NYC, NY 10033

Exhibit 1 – Judge Korman's order
Exhibit 2 - Nancy White's [NYS AG office] letter that Agunah Inc. not registered letter.
Exhibit 3 - letter to IRS that the NYS AG has no records for Agunah Inc. in derogation of the tax laws
Exhibit 4 - Counterclaim
Exhibit 5 – Judge Segal's bogus order
Exhibit 6 - mailing receipts to Judge Ambrosio

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, plaintiff

MOTION FOR POOR MAN STATUS
- vs - APPOINTMENT OF STANDBY COUNCIL

Judge Micheal Ambrosio, Judge Philip C. Segal,
Mark A. Feldman, Esq. Mazal Zirkind and Rivke Haut,
a.k.a. Renee Haut, President of Agunah Inc., defendants

----------X

PLAINTIFF DEMANDS TRIAL BY JURY

I, Harlow Zirkind, being first duly affirmed, depose and say that I am the plaintiff in the above-entitled case; that I have been handling this matter In Propria Persona because of poverty and other reasons; that in tandem with my motion to proceed as a poor man, I state that because of my poverty I am unable to pay for the services of an attorney; that I believe I am entitled to redress; and in the pursuit of justice I respectfully request the appointment of stand-by counsel that is not allowed to have communication with the court.

Affirmed to me this 4th day of February, 1997

_____/s/_____
NOTARY

_____/s/_____
Harlow Zirkind
870 W. 181st St.
Apt. 37
NYC, NY 10033

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, plaintiff MOTION FOR POOR MAN STATUS

- vs -

Judge Micheal Ambrosio, Judge Philip C. Segal, Mark A. Feldman, Esq. Mazal Zirkind and Rivke Haut, a.k.a. Renee Haut, President of Agunah Inc., defendants

----------X

PLAINTIFF DEMANDS TRIAL BY JURY

AFFIDAVIT TO ACCOMPANY MOTION FOR POOR MAN STATUS

Supreme Court for the
County of New York

Affidavit in Support of Motion to Proceed
As A Poor Man

1) Harlow Zirkind, being first duly affirmed, depose and say that I am the plaintiff in the above-entitled case; that I am handling this matter In Propria Persona because of poverty and other reasons; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress.
2) In addition, I respectfully request the appointment of stand-by counsel that is not allowed to have communication with the court.
3) I further affirm that the responses which I have made to the questions and instructions below relating to my ability

to pay the cost of prosecuting the appeal are true.

4) I am presently employed by Fairleigh Dickinson University, 1000 River Road, Teaneck, NJ and am paid $1,695.13 gross pay bi-monthly with a net pay of $910.94 bi-monthly.
5) I have no other source of income.
6) I do not own any real estate, bonds, notes, automobiles or other valuable property excluding clothing. I do own meager household furnishings. I do own stock worth perhaps $200- but the certificate was lost during an order of exclusion.
7) I am obligated to and do pay child support of $215.00 every two weeks and can be reassessed at any time. I also pay for family medical coverage. I owe the following:
   a) Consumer's Edge credit used as cash advance for legal fees, $1,895.71
   b) Dr. Neal Bodner, approximately $165-
   c) First Card credit used as cash advance for legal fees, $252.79
   d) First Union National Bank of Georgia card used as cash advance for legal fees, $4,822.13
   e) Universal Bank card credit used as cash advance for legal fees, $3,641.81
   f) Citibank credit card used as cash advance for legal fees and expenses $4,500-
   g) Household Credit Services credit used as cash advance for legal fees $4,500-
8) **The court should note that due to the so-called child support payments that the plaintiff is making, the plaintiff's salary is garnished to the maximum; and therefore the plaintiff is a statutory indigent as per 15 USC 1673.**
9) I understand that a knowingly false statement or answer to any questions in this affidavit will subject me to penalities for perjury.

Affirmed to me this 4th day of February, 1997

_____/s/_____ _____/s/_____
NOTARY Harlow Zirkind

Let the applicant proceed without pre-payment of costs or fees or the necessity of giving security therefore.

_____ [unsigned, not granted]
NYS Supreme Court Judge

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, plaintiff

COMPLAINT

- vs -

Bernadette Cadore, Dept of Social Services; Micheal Infranco, Deputy Commissioner, Child Support Enforcement; Mazal Zirkind; Former Justice Karen S. Burstein; Judge Philip C. Segal; Hearing Examiner Dorothy McCarrick and 50 John & Jane Does defendants

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PLAINTIFF DEMANDS TRIAL BY JURY

PARTIES

PLAINTIFF:

Harlow Zirkind, a.k.a. Givon Zirkind, with a residence at 870 W. 181st Street, Apt. 37, NYC, NY 10033 is the plaintiff.

DEFENDANTS:

Bernadette Cadore, Dept. of Social Services Bernadette Cadore, Family Unit Worker, initiator of support proceedings and representing the Commissioner of Social Services, Department of Social Services of New York City and the Human Resources Administration of New York City is a defendant with a serviceable address located at: The Office of Legal Affairs, Human Resources Administration, City of New York, 220 Church Street, Room 637, New York, New York 10013.

MIichael Infranco, is the Deputy Commissioner of the Office of Child Support Enforcement, located at 66 Leonard Street, Room 824, NYC, NY 10013 is a defendant.

Former Judge Karen S. Burstein, residing at 258 Broadway, Apt. #2C, NYC, NY 10007 is a defendant.

Judge Philip C. Segal, residing at 209 Strattford Road, Brooklyn, NY 11218 is a defendant.

Hearing Examiner Dorothy McCarrick, 60 Lafayette St., NYC, NY 10013 is a defendant.

Mazal Zirkind residing at 652 Lefferts Boulevard, Brooklyn, NY 11203 is a defendant.

JURISDICTION

Jurisdiction is invoked under Civil Rights Laws 2, 3, 8, 10, 11, 12, 21, 70, 71, & 73, the Race Bias Laws as well as the New York State Constitution Articles I, Sections 2 & 9; Article IV, Sections 13 & 18; Article XIII, Section 1; NYS Social Service Law 29 & 397; US Constitution 1st, 13th & 14th Amendments.

VENUE

Major parts of the violation were conducted in New York County, NYC; and some of the violations were conducted in Kings County, NYC; and the plaintiff maintains an address in New York County, NYC.

CHARGES

1) The Support Enforcement Unit in conjunction with the Dept. of Social Services, premeditately denies due process and abuses the process in order to defraud Congress of billions of dollars every year. This is evidenced by the official government report: the NYS Child Support Standards Act, Evaluation Project and other federal studies as cited in 95-CV-931 (ERK) USD EDNY. The entire record of 95-CV-931 (ERK) USD EDNY is hereby incorporated by reference, including but not limited to ALL allegations and charges made against Micheal Infranco and the Support Enforcement Unit; records; motions; papers; pleadings and evidence submitted.
2) As part of these abuses and denials of due process, the Support Enforcement Unit and Dept. of Social Services engages in illegal and unconstitutional over-assessments that are not based upon fact; existing evidence and fact as well as based upon discrimination as evidenced in 95-CV-931 (ERK) USD EDNY and explained further in this Complaint.
3) In addition, the Support Enforcement Unit; the Dept. of

Social Services (DSS) and the Human Resources Administration (HRA), pursuant to NYS Social Services Law 29 and 42 USC 654 are required to abide by all federal laws that govern the adminstration of any program that receives federal funding, this includes but is not limited to the Support Enforcement Unit (SEU). SEU does not abide by the statutory requirements of 42 USC 654, the 13th and 14th Amendments as was challenged in 95-CV-931 (ERK) USD EDNY.

4) Furthermore, in order to perpetuate these denials of due process, although SEU and Support Court -- which have no jurisdicition to create the fiction of an absent parent in order to collect federal reimbursements -- are exceeding their jurisdictions to create the fiction of an absent parent by creating sum and substance divorces in excess of SEU's, DSS's & HRA's jurisdiction. This is embezzlement of federal funds. This is elaborated on later in this Complaint and is part of the charges and pleadings before the federal court 95-CV-931 (ERK) USD EDNY [Exhibit 1] which has been remanded to state court for state remedy.
5) SEU, DSS & HRA have no legal right to enforce discriminatory policies, especially documented NYS policies of discrimination and religious persecution. SEU, DSS & HRA are engaging in religious extortion and hatred. This is elaborated on later in this Complaint and is part of the charges and pleadings before the federal court court 95-CV-931 (ERK) USD EDNY [Exhibit 1] which has been remanded to state court for state remedy.
6) SEU, DSS & HRA regularly disregard court orders and seize more monies than entitled to by court order. This was evidenced in 95-CV-931 (ERK) USD EDNY. This is elaborated on later in this Complaint and is part of the charges and pleadings before the federal court which has been remanded to state court for state remedy.
7) SEU, DSS & HRA regularly do not post accurately to

accounts for support collection and never make deductions from arrears as required by law. This was evidenced in 95-CV-931 (ERK) USD EDNY. This is elaborated on later in this Complaint and is part of the charges and pleadings before the federal court which has been remanded to state court for state remedy.

8) The plaintiff challenges the NYS FCA law that victims of the Support Extortion Unit must pay in cash or postal money order only is ridiculous and designed as well as abused as a tool of aggression as victims of the Support Extortion Unit can not verify payment and is therefor unconstitutional, null and void.

9) The plaintiff challenges the NYS FCA law that the victims of the Support Extortion Unit are responsible for payments mailed but not received is ridiculous, and is therefor unconstitutional, null and void. Especially, as the law is applied unconstitutionally as the Support Enforcement Unit purposely does not post payments to accounts and does not keep accurate records for the express purpose of double and triple billing, while unconstitutionally and illegally seizing assests for payments already paid but alleged to be unpaid.

10) The plaintiff challenges the NYS law allowing the revocation of driver's license is ridiculous and therefor unconstitutional:

    a) As most individuals drive to work, to remove an individual's ability to work and pay the extortionery fines of the Support Extortion Unit defies all logic and illogical laws are unconstitutional.

    b) There is no nexus between a drivers license and paying child support. The punishment does not fit the crime.

    c) There is no valid assessment and due process in revoking the driver's license just indiscriminate mailings and threats.

    d) And, as in the instant case, the plaintiff was and is

paying his child support payments in full, including arrears within the statutory guidelines for arrears and yet the Support Enforcement Unit is still threatening to seize the plaintiff's license.

11) The Dept. of Social Services regularly engages in medicaid fraud as the plaintiff [and those similarly situated] are regularly ordered to pay for private family medical coverage as the plaintiff does, yet DSS still provides -- illegally, with full knowledge that the absent parent is providing full medical coverage -- medicaid and treasonously applies for and recieves federal reimbursements for administering such medicaid disbursements.

12) The plaintiff brings these matters to this court as Res Judicata as these allegations were made and evidenced in the District Court [95-CV-931 (ERK) USD EDNY] and never denied and/or refuted.

HISTORY

13) Since June 1, 1993, the plaintiff has been the victim of aggravated harassment by lawsuit, vexatious and malicious prosecutions, bribery of court officials in every court that the plaintiff has been persecuted by the defendants Mazal Zirkind, Mark A. Feldman, Esq. and Agunah Inc. And, the target of corrupt and bribed NYS officials, court officials, including judges. And, the target of well documented and publicized NYS public policies of discrimination.

14) In an attempt to seek redress, the plaintiff filed a lawsuit in the USD EDNY, 95-CV-931 (ERK). The entire record of 95-CV-931 (ERK), including all evidence, transcripts, cross-motions, and any papers and pleadings are hereby incorporated by reference.

15) On Jan. 9, 1997, the Hon. Edward R. Korman issued an order (Exhibit 1) directing the plaintiff to raise his pendent state law claims in state court. The plaintiff has divided those claims into several individual lawsuits

governing those issues.

16) The instant lawsuit governs:
    a) The extortionery over-assessment by SEU and;
    b) The illegal search and seizure without warrants by SEU and;
    c) Discriminatory policies by SEU and;
    d) Denials of due process by SEU and;
    e) Non-compliance with NYS Social Services Law 29 and 42 USC 654 by SEU including but not limited to:
        i) Not keeping records.
        ii) Keeping improper, inaccurate and inexact records .
        iii) Not keeping computerized records.
        iv) Seizing more money than allowed by court order.
        v) Premeditatly not deducting for arrears in order to seize more monies than allowed by law.
        vi) Violations of the 4th Amendment of the federal constitution.
        vii) Violations of the 5th Amendment of the federal constitution.
        viii) Violations of the 14th Amendments of the federal constitution.

17) The plaintiff challenges the New York State Family Court Act in part or whole as unconstitutional in that the NYS FCA does not provide due process and trial by jury for denial of major liberty interests: temporary orders of protection; orders of protection; temporary orders of custody; permanent orders of custody and termination of parental rights.

18) And; that the issuance of orders of protection and temporary orders of protection and ex-parte temporary orders of protection for "good cause" is a term too ambiguous as to be codified law which inherently violates the federal & NYS constitutions.

19) And; the "wide discretion" with which Family Court judges are empowered inherently denies any form of due

process which inherently violates the federal & NYS constitutions.

20) All of the above leads to search and seizure without: cause, probable cause, oath, affirmation, and a description of the things to be seized, as it did in the plaintiff's Family Court case, specifically the child support hearings initiated by the Commissioner of Social Services, Dept. of Social Services of the City of New York and Human Resources Administration of the City of New York as an agent for Mazal Zirkind and conducted before Hearing Examiner Dorothy McCarrick of Manhattan Family Court, docket # F-22519/93 where the Dept. of Social Services and Human Resources Administration attempted to use and incriminate the plaintiff with so-called evidence obtained by a violation of 4th, 5th and 14th Amendment rights. (Silverthorne Lumber Co. v. United States 1920).

21) Pursuant to NYS Social Service Law 29, NYS agencies must comply with all laws that federal agencies [reimbursing state agencies for child support collection] must comply with. Federal agencies must comply with the federal constitution, including but not limited to the 4th Amendment. Wherefore, the NYS Dept. of Social Services must comply with the 4th Amendment. And, as the NYS Dept. of Social Services introduced evidenced into docket # F-22519/93 which was not procurred by a warrant issued by a judge, yet was seized from the plaintiff's residence against the plaintiff's will, this action violated NYS Civil Rights Laws and the federal constitution, the 4th & 14th Amendments.

22) In addition, the Commissioner of Social Services, Dept of Social Services, Human Resources Administration and Support Enforcement Unit, its employees and agents by virtue of the fact that they are enforcing FEDERAL child support laws and guidelines in order to be reimbursed by the federal government for these support collection

activities are acting as AGENTS AND EMISSARIES of the FEDERAL government and are therefore bound to all federal statutes, including but not limited to the **4th and 14th Amendments**; and not just the federal statutes pertaining to determination of child support awards and methods of collection. (Exhibit 16, 95-CV-931 (ERK) USD EDNY).

23) Furthermore, the support hearings conducted by the Family Court are inherently in violation of the 5th and 14th Amendments which result in 4th Amendment violations by the Support Enforcement Unit.

24) So much so, that Hearing Examiner Dorothy McCarrick in writing in her written decision, warned the plaintiff what action to take, should the Support Enforcement Unit seize more funds than the agency is entitled to. (Exhibit 15, 95-CV-931 (ERK) USD EDNY).

25) The collection actions on the part of the Support Enforcement Unit occurred against the plaintiff while the plaintiff was attempting to litigate issues in Brooklyn Family Court before Karen S. Burstein which included many premeditated and malicious denials of due process as well as arbitrary adjournments.

26) This also caused undue hardship which severely limited the plaintiff's ability to litigate his case and preserve his rights. Thereby, denying the defendant his 14th Amendment rights in Brooklyn Family Court.

27) In addition, the automatic seizure of $50- per week for arrears of any amount -- in the plaintiff's case this once amounted to five thousand dollars ($5,000-) due to the RETROACTIVE support awards -- (Exhibit 15, 95-CV-931 (ERK) USD EDNY) without a trial or hearing by the Support Enforcement Unit violates the 14th Amendment.

28) In addition, the only way the defendants were able to initiate proceedings against the plaintiff was by premeditated, malicious denials of due process by Karen S. Burstein who refused in derogation of her jurisdiction

and the NYS FCA to conduct trials and engaged in unnecessary and arbitrary adjournments beyond all statutory limitations for the express purpose of religious hatred and extortion as well as sexual discrimination which are violations of the NYS Constitution, NYS Civil Rights Law, the federal constitution, especially but not limited to the 1st & 14th Amendment which is statutory treason (as explained in C.A. 3rd. Cir. 96-8065 which is hereby incorporated by reference). Without the above denials of due process, the fiction of the plaintiff being an absent parent could never have been achieved and the defendants would never have had any claim against the plaintiff.

29) In addition, Karen S. Burstein premeditatedly and purposely made arbitrary adjournments and denied the plaintiff trial as well as extended the temporary ex-parte order of protection beyond six (6) months without a trial or hearing of any kind in order to deplete the plaintiff's financial resources:

a) By creating a legal fiction of "an absent parent" whereby the Commissioner of Social Services, Dept. of Social Services, Human Resources Administration and Support Enforcement Unit could collect funds which they could not have otherwise collected without said denial of due process.

b) So that plaintiff would not have the funds to properly adjudicate his claims in Brooklyn Family Court, Support Court and the Appelate Division.

30) In the instant case, as well as in literally millions of similarly situated cases, the 'best interests of the children' and child support were not; are not and never were the issue. Plaintiff [as other similarly situated individuals] was supporting his children until Family Court action was initiated and plaintiff has been paying his child support in accordance with the law in spite of the diabolical denial of access to his children. The real issues are attempted,

premeditated denial of due process and involuntary servitude evidenced by the Commissioner of Social Services, Dept. of Social Services' and Human Resources Administration's aggressive and antagonistic manner toward the plaintiff; the embezzlement and absconding of federal funds by Micheal Infranco as well as the creation of a huge and sorely unneeded bureaucracy creating many unwarranted jobs for members of the correct political party.

31) The court should note that in the vexatious and malicious prosecution [docket# O-5998/93; O-6410-93; V-8536-7/93] Judge Philip C. Segal issued an outrageous order against the plaintiff that was based upon no existing law. This part of the bribed Judge Segal's order was so ridiculous that it was overturned by the Appealate Division, appeal #95-1328, 95-1491, 95-1494, & 95-1497. The entire record of this appeal is hereby incorporated by reference.

32) In addition, Judge Segal issued an order of exclusion based upon no law [NYS Appealate Division, appeal #95-1328, 95-1491, 95-1494, & 95-1497].

33) Wherefore, the forced fiction of the plaintiff being an absent parent is based upon no law but an extortionery and treasonous abuse of the legal process [C.A. 3rd. Cir. 96-8065].

34) It is not coincidental that the order for support was mailed to the plaintiff on January 10, 1995: The same day Judge Segal refused to recuse himself without a hearing and dened due process i.e. giving the plaintiff a trial.

35) SEU's premediated over-assessments inherently violate NYS CRL 3 & 11 as well as the 13th Amendment; are secured by denials of due process; are treasonous defrauding of Congress; and constitute medicaid and welfare fraud as elaborated in docket # F-22519/93.

36) During the proceedings of F-22519/93, the plaintiff presented evidence to the court that the plaintiff had had

family medical coverage prior to and during the case F-22519/93 and that the plaintiff had never made any attempt to cancel said coverage. The plaintiff also clearly demonstrated that which was not denied or refuted, that Mazal Zirkind was intentionally using medicaid instead of the private family medical coverage by the plaintiff and; that Mazal Zirkind committed perjury as well as fraud upon the court and stated that the plaintiff was not paying for and/or providing medical coverage for the infant children.

37) Furthermore, the Hearing Examiner, Dorothy McCarrick told Mazal Zirkind that Mazal Zirkind may use either the Medicaid or the private family medical coverage at her discretion:
   a) This constitutes medicaid fraud on the part of the court.
   b) Which also constitutes statutory treason on the part of the court.
   c) Which also aids and abets the statutory treason of DSS and;
   d) IS NOT THE LAW. MAZAL ZIRKIND HAD NO DISCRETION AND CHOICE BUT TO USE THE PRIVATE MEDICAL COVERAGE FOR THE INFANT CHILDREN PAID FOR BY THE DEFENDANT.

38) In sum and substance, these actions [of SEU, Karen S. Burstein, Philip C. Segal and Mazal Zirkind] amount to "involuntary servitude" NOT for "a punishment for a crime whereof the party have been duly convicted" but as an obstruction of justice and abuse of process for personal financial gain which is a violation of my 13th Amendment rights.

39) The court should note that these illegal actions were done in tandem with malicious prosecution, witness tampering, bribery by Judge Segal by Agunah Inc. which abuses its tax exempt status and is funded by drug financing money

of Agunah Inc.'s so-called "Rabbi" Mendel Epstein, by enforcing NYS policies of discrimination against Jews i.e. the GET laws and; that the Hearing Examiner Dorothy McCarrick was fully informed of all these matters by a motion and affidavit in support filed by the plaintiff during the proceedings of F-22519/93. Dorothy McCarrick chose to ignore the affidavit in its entirety by the lame excuse of the relief not being within the jurisdiction of Ms. McCarrick's court.

40) The statement upon Ms. McCarrick's part is not true. The court had jurisdiction to:
   a) Write letters to the respective agencies requesting criminal investigation and/or prosecution.
   b) The court certainly had jurisdiction to stay proceedings until resolution of the plaintiff's claims, especially as the court's jurisdiction was challenged.

DOUBLE JEOPARDY

41) The court should be aware that the instant claims were raised in US District Court, Eastern District of New York, 95-CV-931 (ERK) USD EDNY. Upon the order of the Hon. Edward R. Korman, USDJ, [Exhibit 1] the plaintiff is attempting to vindicate these rights and pendent state law claims in NYS court. However, the plaintiff has good reason and supporting evidence that the NYS courts will again not afford the plaintiff due process. At which time, the plaintiff will have exhausted all state remedies and again be forced to seek redress in the federal courts.

42) Not-with-standing, the plaintiff has petitioned to appeal the decision of the Hon. Edward R. Korman, USDJ as Cheryl L. Pollak, USMJ presiding, did not call the plaintiff's witnesses, nor force Citibank to comply with the USMJ's Order and plaintiff's Notice to Produce the bank records of Citibank account #779133442, and Agunah Inc.'s bribery of state court officials.

43) Furthermore, the Magistrate in her recommendation, totally ignored federal and state reports proving public

policies of discrimination by NYS and a public policy of denials of due process.

44) However, the plaintiff has neither recieved word that the plaintiff's district court appeal has been filed, nor that the plaintiff's petition for leave to appeal to the 2nd Circuit has been filed.

THE INSTANT VEXATIOUS LAWSUIT AND VIOLATIONS OF CIVIL RIGHTS EXCESS OF JURISDICTION

45) As explained at length in 95-CV-931 US EDNY [particularly in the plaintiff's Memorandum of Law], the Agunah cultists [of whom Mazal Zirkind has become a member] have a modus operandi of filing false abuse charges, securing bogus orders of protection, thereby throwing men out of their homes without cause; securing false psychological reports with malicious, unfounded and fraudulent recommendations that fathers not be allowed to see their children and thereby usurping custody from fathers baselessly; all for the express purpose of religious hatred and extortion of Agunah cultist rituals.

46) Also, it is a well known and established fact that in tandem with the Agunah cult, family court is making ex-defacto divorces. Family court has no jurisdiction what-so-ever to make a divorce. Yet, family court on a regular basis, physically separates husband and wife -- as it did to the plaintiff which also includes a property settlement as the plaintiff being thrown out of his home all chattel instantaneously comes under the custody of the wife; fixes custody -- as it did to the plaintiff and fixes child support -- as it did to the plaintiff.

47) It is a well known fact of NYS Family Law that family court has no jurisdiction over married couples. In the case in question, the parents [the plaintiff and Mazal Zirkind] were and still are 100% married at the inception of all family court cases ever held by against the plaintiff

and; family court by NYS FCA statutes has no jurisdicition over a married couple without referral from the divorce court of NYS Supreme court.

48) Therefore, Judges Karen S. Burstein and Philip C. Segal as well as Hearing Examiner Dorothy McCarrick, the Dept. of Social Services and the Support Enforcement Unit; premeditatedly exceeded their jurisdiction in order to make a divorce and fix child support in family court for the express purposes of religious hatred and extortion as well as aiding and abetting the Agunah cult which is in and of itself an excess of jurisdiction as "the courts are not to be used as a sword of religious persecution."

49) As the defendants knowingly and unconstitutionally abused their positions and knowingly aided and abetted the Agunah cult, the defendants exceeded their jurisdiction and committed statutory treason.

50) In addition, the well-known, documented [by NYS CSSA Evaluation reports, evidenced in 95-CV-931 (ERK) USD EDNY] public policy of oppressive, extortionery over-assessment by SEU is a form of extortion by the courts in conjunction with the Agunah cult used as a known means of religious extortion.

51) In addition, the Support Enforcement Unit operates as a clandestine agency with secret records that the agency refuses to reveal to the public, not even to the persons whose moneys are being seized. This is in derogation of NYS SSL 29 which establishes the legal requirement that SEU must maintain computerized records available for inspection in accordance with 42 USC 654.

52) The plaintiff was told on several occasions by Support Enforcement workers that the plaintiff is not entitled to a record of his account and on one occasion that the plaintiff was told that the plaintiff is not even allowed to look at his account records on the computer screen (Unisys terminal) while discussing a dispute between the agency's records and the plaintiff's records. This was

stated to the plaintiff by Mr. Aigbedion on or about November 25, 1994 in the agency's office located at 66 Leonard Street, NYC, NY. This matter is Res Judicata as the SEU's bookkeeping system is purposely handled in an antiquated manner so as to cover-up any illegal activity and wrongdoing, evidenced by the fact that the plaintiff has received HANDWRITTEN, scribbled accounting statements in response to requests for a copy of a statement (Exhibit 15, 95-CV-931 (ERK) USD EDNY). These accounting procedures violate federal requirements of same which SEU must comply with according to NYS SSL 29. (Exhibit 16, 95-CV-931 (ERK) USD EDNY). The plaintiff brings this matter as Res Judicata as these allegations and evidence were brought before the District Court and never denied and/or challenged by the embezzling Micheal Infranco.

53) In addition, the embezzling Micheal Infranco never denied in the District Court that the Support Enforcment Unit regularly is missing a minimum 40% of microfiche records during all audits by the federal Office of Child Support Enforcement.

54) In addition, the embezzling Micheal Infranco and Dept. of Social Services, never denied in the District Court that those for whom the Support Enforcement Unit and DSS act as agents, have access to private family medical coverage by court order while DSS is providing medicaid and being reimbursed from the federal government for same. This was evidenced in the instant case before former Judge Karen S. Burstein and Hearing Examiner Dorothy McCarrick who not only did nothing about the medicaid fraud but encouraged the medicaid fraud; and DSS took no corrective action. DSS has done so in many other cases. The plaintiff brings this matter as Res Judicata before this court as this was evidenced in both state and federal court and never denied.

CRIMINAL VIOLATIONS BY MAZAL ZIRKIND

55) Mazal Zirkind committed perjury and made false as well as fraudulent statements to DSS in order to collect welfare, child support and medicaid.

56) Mazal Zirkind is using medicaid while fully covered by the plaintiff's family medical coverage provided by his employer, Fairleigh Dickinson University.

57) Mazal Zirkind knowingly made false child abuse accusations, for the express purpose of religious hatered and extortion as well as to fraudulent apply for and collect federal funding.

VIOLATIONS OF DUE PROCESS BY HEARING EXAMINER DOROTHY MCCARRICK; MICHEAL INFRANCO OF THE SUPPORT ENFORCEMENT UNIT; PERPETRATED BY BRIBERY, EMBEZZLEMENT, ANTI-SEMITISM AND THE ENFORCEMENT OF NYS PUBLIC POLICIES OF DISCRIMINATION WHICH CONSTITUTE STATUTORY TREASON

58) The State of New York has a discriminatory policy against Orthodox Jews in general and Orthodox Jewish men particularly, especially fathers in divorce and family court. This is evidenced by the unconstitutional GET Laws (DLR 240, etc.) This matter was elaborated upon in 95-CV-931 USD EDNY and is explained in the Columbia Journal of Law and Social Problems, New York Get Laws, A Constitutional Analysis, Vol 27, Number 1, Fall 1993. The entire article is hereby incorporated as part of this lawsuit [as it was of 95-CV-931 USD EDNY] and all the additions and amendments to the article made by the plaintiff in 95-CV-931 USD EDNY are hereby incorporated by reference.

59) The GET Laws violate the 1st Amendment of the federal constitution, both the free exercise and establishment clauses.

60) There is no law that requires gentiles to perform religious divorce ceremonies. Only the Orthodox and Chassidic

Jews are forced by NYS law to perform religious divorce ceremonies by the GET law which affects Orthodox and Chassidic Jews only.

61) The actions of the New York State family courts are inherently sexist and discriminatory against fathers. This can be evidenced by statistical analysis of New York State reports (Report of the Chief Administrator of the Courts, Pursuant to Judiciary Law Section 216(5) as required by the Child Supports Standards Act) that are produced in accordance with federal statute in comparison with statistics produced by the US Census Bureau (Current Population Reports, Population Characteristics, Series P-20, No. 461) and the national Centers for Disease Control (US Dept of Health and Human Services, Centers for Disease Control and Prevention, Monthly Vital Statistics Report, Vol. 43, No. 9, Supplement, March 22, 1995, tables 18, 19 and 20).

62) Even though the State of New York and the family courts abuse the law of the "confidentiality of the children" as a smoke screen and McCarthyist and Stalinistic measure to hide corruption, fixing trials, manufacturing evidence, absconding with federal funds, thievery, kidnapping under the color of state law, prejudice, discrimination, bigotry and other violations of civil rights, the New York State Compendium of Child Support which is produced on a yearly basis, shows that New York State is only awarding 3.6% of child support awards to fathers. Conversely, consistently, every year an average 90% of ALL child support awards are to women, which also means that 90% of ALL custody awards are to mothers, which means that 90% of all fathers are crazy, drug addicts, disabled or otherwise unfit parents.

63) For all intents and purposes, the State of New York awards maternal custody 100% of the time.

64) Three point six percent (3.6%) is so insignificant as to not be considered. In addition, this is a full two-thirds (2/3)

below the national statistic as reported by the US Census Bureau and the national Centers for Disease Control (ibid.).

65) Such statistical analysis is proper and valid statistical analysis for circumventing 'privileged' information.

66) Data(base) analysis is the plaintiff's field and he is duly qualified to make this statement.

67) In addition, according to the national Center for Disease Control, the national average maternal custody award rate is seventy-two (72%); however New York State is awarding maternal custody on the average, ninety percent (90%) of the time; which is eighteen percent (18%) above the national average. Furthermore, if there is no prima facie right to custody [as is the current NYS law], then ninety percent (90%) maternal custody can not be considered by any stretch of the imagination as anything but 'no prima facie right to custody'.

   a) The New York State, Child Support Standards Act, Evaluation Project 1993 displays prejudice, discrimination, denials of due process, unequal protections under the laws and other improprieties among the support courts and the Dept. of Social Services:

      i) That mothers had sole custody in 96% of the family court cases. Footnote 44 advances as conjecture an undocumented theory, which certainly does not explain the instant case.

      ii) That two-thirds (2/3) of the custodial parents (women) did not provide proof of income while only half (1/2) of the non-custodial parents (men) did not provide proof of income. As in the case where Harlow Zirkind [was sued by Mazal Zirkind and DSS] Harlow Zirkind was asked by the family court to produce a sworn net worth statement, but Mazal Zirkind was never asked by the court to do such a thing; Harlow Zirkind's

attorney, Carol Zimmerman, requested that Mazal Zirkind produce income verification and the court never enforced that request. This is a violation of the Social Services Laws -- including but not limited to NYS SSL 29 -- enacted to conform to the conditions of federal grants pursuant to 42 USC 654 and other statutes as well as NYS Civil Rights Law 3, 10 & 11 and the 14th Amendment of the federal constitution.

iii) **That child support awards are excessive beyond the legal guidelines; putting non-custodial parents (fathers) into poverty; that the lower the income, the greater the deviations from the guidelines and that there is no justification for the deviations from the guidelines.**

iv) That the deviations as stated in the report were actually greater, but such cases were excluded from the report as "unique" cases that would have improperly skewed the report.

v) Indeed, the plaintiff [in the family court case F-22519/93] had documented the loss of significant income due to a loss of consulting clients from a part-time business that was in addition to the plaintiff's regular forty (40) hour a week job. This loss of income occurred approximately three (3) months before the Brooklyn Family Court case began and approximately nine (9) months before the support hearings were commenced. In addition, the plaintiff had submitted copies of tax returns for the past five (5) years which indicated two years of unemployment or extremely low income: One year was only eight thousand five hundred dollars ($8,500-) for a family of five (5). In spite of the above, the plaintiff was told apologetically by the Hearing Examiner, Dorothy

McCarrick, that even though he had lost the income and the loss was documented, even though the loss was in the past: The income would still have to be entered into the equation as per statute (Complaint 95-CV-931, Exhibit 15). HOWEVER, no mention was made about the statutory requirement to examine past tax returns to establish ability to pay. A clear violation of Civil Rights Law 3 & 8 as well as the Family Court Act.

b) Seventy-five percent (75%) of ALL child support is paid (Current Population Reports, US Bureau of the Census, Series P-23, No 173, 1989) and sixty-six percent (66%) of ALL support not paid by non-custodial fathers is due to the INABILITY TO PAY (US General Accounting Office Report, GAO/HRD-92-39FS, January 1992) and; that three times as many mothers as fathers default on support (US Census Bureau SB-16, How Gets Child Support). This is not congruous with the rabid dog hunt of fathers for non-payment of child support by the State of New York and that only one mother in the history of NYS has ever been incarcerated for non-payment of child support while fathers are locked up every day.

68) As evidence submitted as part of the record of 95-CV-931 USD EDNY which has already been incorporated by reference, The NYS report, Report of the Chief Administrator of the Courts January 1, 1992 - December 31, 1992, states on pgs. 157-164, that Brooklyn Family Court has a 100% conviction rate. This statistic in and of itself is most damaging and indicates a kangaroo court. It is even more damaging when it is known that according to the US Census Bureau report, NIS-1 & NIS-2 (National Incidence Study which are studies designed to monitor child abuse and child abuse reporting. These studies are prepared in conjunction, by Dept. of Health

and Human Services, Children's Bureau, National Center for Child Abuse and Neglect.) 80% of all child abuse reports are unfounded and 54% of child abuse reports by Social Services and Child Protective Services are unfounded.

LEGISLATIVE INTENT OF THE CIVIL RIGHTS LAW

69) It is well established law that the States may not detract from the rights guaranteed by the federal Constitution, however the states may add to those rights.

70) The Civil Rights laws of New York State were enacted in parralellism to the federal Constitution, including but not limited to the 1st & 14th Amendment. And, that the same procedures, reasoning, ethics and guidelines apply to the NYS CRL as the 1st & 14th Amendments.

LIABILITY AND LEGAL OBLIGATIONS OF THE DEPT. OF SOCIAL SERVICES

71) While it is clear that the Dept. of Social Services has a long standing, well known and documented policy of discrimination against fathers, it is not clear that the Dept. of Social Services, Child Welfare Administration division participated in the malicious prosecution in question. Nor, is it clear that the Dept of Social Services violated the law and furnished the information, that Mazal Zirkind testified to.

72) However, irregardless, now that the Dept. of Social Services is aware of the false child abuse accusations made by Mazal Zirkind, pursuant to SSL 29 & 397 as well as 42 USC 5106a, the onus is upon the Dept. of Social Services to prosecute Mazal Zirkind and demand the immediate reversal of custody to the father -- Harlow Zirkind.

73) It must be emphasized that the Dept. of Social Services has a documented discriminatory policy (evidenced above from NYS reports) in derogation of the law, of refusing to place children with fathers. The reason being that most

fathers are not on public assistance and therefore the state does not reap the rewards of billions of dollars in federal grants when children are placed with fathers, especially fathers who work for a living. And, therefore, the Dept. of Social Services can not fund its unneeded bureaucracy.

Wherefore the plaintiff respectfully requests the following relief:

1) The written recommendation to the US Attorney's office for the criminal prosecution of civil rights violations by the defendants and;
2) The written recommendation of the court to the Ethics Committee for the immediate impeachment of Judge Philip C. Segal and Hearing Examiner Dorothy McCarrick and;
3) The written recommendation to the Bar for the immediate disbarment of Philip C. Segal, Karen S. Burstein and Dorothy McCarrick and;
4) The written recommendation to the District Attorney and/or the Attorney General for the criminal prosecution of the defendants and;;
5) That the Dept. of Social Services is to immediately begin a prosecution against Mazal Zirkind for filing false abuse charges and recommend that custody be reversed and given to the father, Harlow Zirkind and;
6) The cost of this lawsuit and;
7) The reimbursement for all payments of so-called child support seized and;
8) Punitive damages of eighteen 18% interest upon the illegally seized so-called child support payments; and
9) The cost of the family court case before Hearing Examiner Dorothy McCarrick and;
10) Twenty million dollars from each defendant in punitive damages except from the Dept. of Social Services and;
11) Any other relief deemed appropriated by the court.

Affirmed to me this 18th day of February, 1997

_____/s/_____
NOTARY

_____/s/_____
Harlow Zirkind
870 W. 181 St.
Apt. 37

NYC, NY 10033

Exhibit 1 – Judge Korman's order

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, plaintiff

MOTION FOR POOR MAN STATUS

- vs -

Bernadette Cadore, Dept of Social Services; Micheal Infranco, Deputy Commissioner, Child Support Enforcement; Mazal Zirkind; Former Justice Karen S. Burstein; Judge Philip C. Segal; Hearing Examiner Dorothy McCarrick and 50 John & Jane Does defendants

----------X

PLAINTIFF DEMANDS TRIAL BY JURY

AFFIDAVIT TO ACCOMPANY MOTION FOR POOR MAN STATUS

Supreme Court for the
County of New York

Affidavit in Support of Motion to Proceed
As A Poor Man

1) Harlow Zirkind, being first duly affirmed, depose and say that I am the plaintiff in the above-entitled case; that I am handling this matter In Propria Persona because of poverty and other reasons; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress.
2) In addition, I respectfully request the appointment of stand-by counsel that is not allowed to have communication with the court.
3) I further affirm that the responses which I have made to

the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

4) I am presently employed by Fairleigh Dickinson University, 1000 River Road, Teaneck, NJ and am paid $1,695.13 gross pay bi-monthly with a net pay of $910.94 bi-monthly.
5) I have no other source of income.
6) I do not own any real estate, bonds, notes, automobiles or other valuable property excluding clothing. I do own meager household furnishings. I do own stock worth perhaps $200- but the certificate was lost during an order of exclusion.
7) I am obligated to and do pay child support of $215.00 every two weeks and can be reassessed at any time. I also pay for family medical coverage. I owe the following:
   a) Consumer's Edge credit used as cash advance for legal fees, $1,895.71
   b) Dr. Neal Bodner, approximately $165-
   c) First Card credit used as cash advance for legal fees, $252.79
   d) First Union National Bank of Georgia card used as cash advance for legal fees, $4,822.13
   e) Universal Bank card credit used as cash advance for legal fees, $3,641.81
   f) Citibank credit card used as cash advance for legal fees and expenses $4,500-
   g) Household Credit Services credit used as cash advance for legal fees $4,500-
8) **The court should note that due to the so-called child support payments that the plaintiff is making, the plaintiff's salary is garnished to the maximum; and therefore the plaintiff is a statutory indigent as per 15 USC 1673.**
9) I understand that a knowingly false statement or answer to any questions in this affidavit will subject me to

penalities for perjury.

Affirmed to me this 18th day of February, 1997

_____/s/_____ _____/s/_____
NOTARY Harlow Zirkind

Let the applicant proceed without pre-payment of costs or fees or the necessity of giving security therefore.

_____
[unsigned, not granted]
NYS Supreme Court Judge

Exhibit 19 – Handwritten note, undated, from New York State court clerks refusing to file Petitioner's NYS Civil Rights Cases

NYS SUPREME COURT
EX PARTE MOTION PART
ROOM 315

Dear Mr. Zirkind:

I am sending you the correct forms and sample to file for poor persons status. A complaint, statement of service by mail and an acknowlegement of receipt is not needed at this time. Furthermore, the court does not provide legal counsel. What is needed is a notorized P.P. order. On the white paper please give a written background of the case supportin gthe merits of your claim and attack proof of income to prove poor person status. A copy of your 1995 or 1996 tax return would be acceptable.

Sincerely,

/s/

stamped:

Lawrence Shapiro
Senior Court Clerk
Supreme Court
State of New York
First Judicial District

[There is no date on this document.]

Exhibit 20 – Contempt Motion against Mark A. Feldman, brought before USD 95-CV-931 EDNY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Harlow Zirkind, plaintiff 95-CV-931 (ERK-JLC)
CONTEMPT OF COURT MOTION

- against -

State of New York, et al.

----------X

1. The plaintiff, Harlow Zirkind, will move this court, before the Honorable Judge Korman, at the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, NY, on the ____ day of the month of _____, 19___, to hold Mark A. Feldman, defendant, in contempt of court, and to request imposing of appropriate sanctions and other measures as justice requires; and for any such further relief as the court may deem just and proper.

2. To date, the defendant, Mark A. Feldman, attempted to avoid service twice and attempted to perpetrate at least one documentable fraud upon this court.

3. On page 5 of the defendant's Memorandum of Law, the defendant states that he "was always the attorney for Mazal Zirkind". Clearly, Mark A. Feldman is an attorney. As such, the defendant should be aware, as the layman plaintiff is, that all legal papers have numbered paragraphs, to F.R.C.P. 10 (B). However, Mark A. Feldman obviously, feels free to operate NOT in accordance with standard legal procedure.

4. On page 9 of the defendant's motion (Exhibit 1), the defendant states that the plaintiff's claim is too broad to be considered by the court and "The only factual allegation against me is that I am the attorney for his wife." However, the defendant then contradicts himself on page 10 by saying "The

plaintiff also alleges that I committed documentable obstruction of justice by telling subpoenaed witnesses not to appear in court." This statement refers to paragraph 30 of the Complaint and is a specific detail of the charge leveled at Mark A. Feldman. The defendant then continues, "He [the defendant, Mark A. Feldman is referring to the plaintiff, Harlow Zirkind] fails to state who the witnesses were and to provide documentation in support of his claim. This allegation should be dismissed as **BASELESS**." Neither the plaintiff nor anyone else can not construe the defendant's words in any other way than complete denial: That the incident never happened. In addition on page 5 of the defendant's Memorandum of Law, the defendant says, "I was and still am the attorney representing Mrs. Zirkind in the Family Court proceedings." I, the plaintiff, would assume that the defendant would not dispute the fact that he was Mrs. Zirkind's attorney from the beginning of the case until the day the defendant's Memorandum of Law was filed. Therefore how does Mark A. Feldman explain the subpoena in Exhibit 2 of this motion? This was the **ONE AND ONLY** witness the plaintiff **EVER SUBPOENAED** during the entire case. Furthermore, this subpoena was served by Michael Hizme who will testify to the fact of service; and as reported to the plaintiff by his attorney Carole Zimmerman who issued the subpoena, Mark A. Feldman told her "Your witness will not be in court because I told him not to come", indeed Carole Zimmerman, Esq. attempted to hold Mark Feldman in contempt of court for this matter in Kings County Family Court but Judge Burstein would not allow the matter to be pursued, but only asked Mr. Feldman why he had spoken to the other party's witness. This is a matter of record that should be available from transcripts unless the transcripts are altered (See Opposition Papers to the State, Exhibit 5, which is a NYS report of which the court must take judicial notice pursuant to Federal Rules of Evidence 201). In addition, Carole Zimmerman can be deposed concerning this matter.

5. The plaintiff maintains that if the court does not concur with

the plaintiff then pursuant to 28 USC 2201, these are matters of fact in dispute for which discovery must be had before this motion can be dismissed.

6. In addition, the court must understand the great importance of this witness in the trial that was mistried. Rabbi Kleinman was a neighbor of the Zirkind family for approximately 6 years. He is also an E.M.T. (emergency medical technician). As he told the plaintiff, he never saw nor heard any complaints about child abuse; and that he is required by law to report such incidents if he sees them or hears of them; and that he never filed any such complaints against the defendant. This is an expert witness whose testimony was crucial to the outcome of the case, especially if it would have been heard in a fair court. In addition, he does not remember hearing of or seeing me physically throw my wife out our house that we lived in, and down a flight of stairs. As my wife testified that this occurred on a Saturday AND that there was a crowd of seventy-five to a hundred people (75 -100) outside watching the incident AND that there was a big fight, with screaming. I find it most peculiar that Rabbi Klienman does not remember the incident. The plaintiff does not believe that seventy-five people live on the block. Nor, does Rabbi Klienman have any recollection of my being present in his (Rabbi Klienman's) home for the holiday dinner of Shavuos of 1993. This fact is most important as the only tangible evidence of any kind that my wife presented in court besides her testimony was a witness, Susan Goldberg a.k.a. Tzivia Goldberg, who testified to HEARSAY testimony of my son Pesach repeating a statement that I made. The plaintiff reaffirms here as he did in family court that the allegations and matters "testified" to are absolute perjury. Rabbi Kleinman's testimony would have greatly helped substantiate this claim of the plaintiff. The plaintiff understands and empathizes with Rabbi Kleinman's desire not be involved in a domestic dispute and domestic relations litigation, however the plaintiff did subpoena Rabbi Klienman and Rabbi Kleinman did not come. The plaintiff firmly

believes that Rabbi Kleinman would not lie in court under oath. Rabbi Kleinman's testimony in the instant case is most important as to a clarification of facts pursuant to 28 USC 2201.

7. Does Mark A. Feldman suppose that this federal court will operate like the Kings County Kangaroo Courts? Does Mark A. Feldman intend to pull shenanigans in this court as he did in family court? Without reprimand?

8. The plaintiff maintains that Mark A. Feldman is trying to perpetuate the same kind of frauds and misrepresentations upon this court as he did in Kings County family court.

9. On May 8, 1995, the plaintiff served Mark Feldman, defendant, with cross motion papers. Mark Feldman denied ever having been served (Exhibit 3). The plaintiff responded by serving Mark Feldman a second time and attaching a letter, that was copied to the court (Exhibit 4) emphasizing the fact that Mark Feldman *"magically"* received all other motions but HIS opposition papers and the contempt of court request against him.

10. After the plaintiff received Mark A. Feldman's letter dated May 15, 1995, the plaintiff proceeded to serve Mark A. Feldman by US Mail, restricted delivery only (See Copies of Some Return Cards, Exhibit 5).

11. Again on Nov. 30, 1995, the plaintiff served upon the defendant Opposition and Cross-Motion Papers which the defendant refused to pick up from the post office. In addition, during the January 4, 1996 Status Conference before Magistrate Pollak in response to the Magistrate's question 'Did all defendants receive opposition papers?', the defendant with all impunity stated on record, that he was not served with opposition papers. Mark A. Feldman was the only defendant to state he was not served. However, the copies of the mailing receipts and mail bag evidence otherwise: That Mark A. Feldman refused to pick up the mail bag from the post office (Exhibit 6). At the January 4, 1996 status conference, the plaintiff was told to send again the documents to Mr. Feldman.

The plaintiff did so and on January 29, 1996; the plaintiff received the same documents refused by Mr. Feldman for the second time!

12. The court should note the post office attempted to make a second delivery on or about December 17, 1995. This was two days before Mark A. Feldman secured an ex-parte, unconstitutional order against the plaintiff filing motions (Exhibit 7). The juxtaposition of the events clearly indicates that Mark A. Feldman's actions were certainly intentional if not outright premeditated.

13. On January 4, 1996, during a status conference before Magistrate Pollak, on the record, when the plaintiff discussed all outstanding motions and listed the contempt of court motion against Mark A. Feldman; Mark A. Feldman attempted to advance a defense that his secretary mistakenly did not sign for the package. Mark A. Feldman can not advance this as a defense, because: (a) Restricted Delivery means that only the recipient and no other person can sign for the package/letter and; (b) Mark A. Feldman was fully aware of such procedures as (i) an attorney and (ii) evidenced by prior actions (See exhibit 5) and; (c) Mark A. Feldman was in the country at the time and within New York City environs as Kings County and US District Court records will indicate and; (d) the mail bag is stamped by the post office "UNCLAIMED". "UNCLAIMED" does not mean undeliverable, that the location is unknown. "UNCLAIMED" does not mean that the addressee is unknown. "UNCLAIMED" means that both the location and addressee are known but the recipient was not available to sign for the package upon two delivery attempts, and the recipient did not pick up the parcel and did not sign for it.

14. In addition, on January 4, 1996, during the status conference before Honorable Judge Magistrate Pollak who is currently managing the instant case. Magistrate Pollak addressed the outstanding motions and other matters. The outstanding contempt of court issue filed against Mark A. Feldman was raised. As an In Propria Persona litigant, the

plaintiff erred and only requested that Mark A. Feldman be held in contempt of court, but the caption did not state "Contempt of Court". In addition, the Contempt motion referred to during the status conference was filed on or about May of 1995 and preceeded other incidents of contempt on the part of Mark A. Feldman. Therefore, this formal contempt of court motion is being filed with the court.

15. During the January 4, 1996, status conference before Magistrate Pollak, acts of impropriety including but not limited to evasion of service and; fraud and misrepresentation upon the court by Mark A. Feldman were raised. The Magistrate heard the issues and the available evidence. Mark A. Feldman was present and responded.

16. The court should also recognize, that although the infractions may appear minor or petty, or that incarceration is severe and harsh for first time offenses; the truth is that Mark A. Feldman has a very dark history and has successfully avoided prosecution -- oftentimes by using the shield of his attorney privileges -- for many serious crimes and violations of constitutional and human rights. This court should note that before former family court Judge Karen Burstein, the instant plaintiff while demanding a trial that he was never given, and asserting that the plaintiff could prove his innocence in that trial that was never given, the plaintiff accused Mark A. Feldman of knowingly having initiated a malicious prosecution. During that so-called hearing, the plaintiff stated that based upon information and belief, Mark A. Feldman has made over one hundred fifty false adoptions in concert with Ohel Children's Home. Both Mark A. Feldman and Judge Burstein were silent and no one present in the court room refuted the accusation. However, Judge Burstein motioned to the court reporter, so the matter was not recorded on the record. (Such denials of due process are common in family court as evidenced by Exhibit 5 of the Opposition Papers to the State). It is a fact that Ohel Children's Home (Ohel) is the largest foster care facility in New York State and that the Brooklyn District Attorney's

office has many files against Ohel. That Mark A. Feldman has no regard for procedure in state court is obvious by simply examining his motion papers from state court, coupled with his association with Ohel, and other information and belief. Therefore, the plaintiff is quite confident that Mark A. Feldman is evil and criminal as well as has committed serious great and infamous crimes of New York State and federal law that reach to. the magnitude of violating the United Nations Convention of Human Rights. Yet, Mark A. Feldman has successfully avoided prosecution for almost two (2) decades now. If the only pittance of justice that the plaintiff will ever see meted against Mark A. Feldman is a six (6) month jail sentence for contempt of court, so be it. It is a fraction, not even one tenth of one percent of what Mark A. Feldman truly deserves.

Wherefore, the plaintiff, Harlow Zirkind, respectfully requests that this court:

1. Hold the defendant in contempt of court for attempting to perpetrate a fraud and misrepresentations upon this court and;

2. Incarcerate the defendant, Mark A. Feldman, for attempting to perpetrate a fraud and misrepresentation upon the court and;

3. Order the defendant to reimburse the plaintiff the cost of twenty-four dollars for ($24-) serving papers twice and;

4. To reimburse the plaintiff the cost of this motion and;

5. Any other relief that deems appropriate.

Sworn to and signature executed before me this
31th day of the month of January, 1996.

_____/s/_____	_____/s/_____
County of	HARLOW ZIRKIND
	547 Wyndham Road
NOTARY	Teaneck, NJ 07666
	201-836-7557

exhibit 1 - copy of Mark Feldman's original opposition papers
exhibit 2 - copy of subpeona
exhibit 3 - May 15, 1995 letter from Mark Feldman denying having been served
exhibit 4 - letter to Mark Feldman, demanding an explanation how only Mr. Feldman's motion is missing? And, a copy of the mailing receipt.
exhibit 5 – copy of mail bag refused

Exhibit 21 – Motions to strike, filed during the course of USCA Appeal, 98-9461.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

Harlow Zirkind, plaintiff -- appellant

APPEAL NO. 98-9461

- against - USD EDNY 95-CV-931 (ERK)

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas; Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does. -- defendants - - appellees

----------X

REPLY BRIEF TO APPELLEE NAFTALI BERRILL

1. On Feb. 6, 1999, the appellant-plaintiff recieved a letter from the appellee-defendant dated Feb. 3, 1999. That letter states that the appellee is not filing an appellee's brief. Therefore, the appellee has waived his right to file a brief and in accordance with FRAP 31 and the 14th Amendment, should no longer be allowed to file a brief.

2. Furthermore, the appellee has also waived as well as denied himself the right to oral arguement and in accordance

with FRAP 31(c) and the 14th Amendment, should no longer be granted to the appellee.

3. As the appellee-defendant has filed this letter in lieu of a reply brief, the appellant will consider this letter as the appellee's reply brief and respond thereto as such.

4. The appellee has stated that the appellant-plaintiff has raised no issues concerning the appellee nor has the appellant-plaintiff sought any relief against the appellee. This is incorrect.

5. The appellant-plaintiff has requested in his relief, item #3, "And, that the proceedings begin de novo, including but not limited to all injunctions and motions being heard anew" That request is obviously against all appellees-defendants for all matters. This includes the appellee-defendant, Naftali Berrill.

6. The appellant-plaintiff has demanded in the appeal for full and proper enforcement of the magistrate's order for full financial disclosure of the Agunah cult's church -- Agunah Inc., including the canceled checks from all the Agunah cult's checking accounts. And, that the information from those subpeonaed records be heard properly in accordance with due process. It was made clear during the course of the proceedings before the district court that the so-called Dr. Naftali Berrill, is a member of the Agunah cult and has accepted bribes from the Agunah from these checking accounts in order to commit malpractice -- as defined by federal case law precedant -- and unethical as well as unprofessional file reports.

7. The appellant-plaintiff has demanded in the appeal that all witnesses requested to testify before the magistrate be ordered to testify at a new hearing. The attorney for the appellee-defendant, Mary Pearson, Esq., was asked to testify -- both orally before the magistrate in a hearing and in written notice. Mary Pearson, Esq. was asked to testify concerning unconstitutional actions that Mary Pearson had taken during the course of the proceedings of the case 95-CV-931 before

the Honorable Judge Edward R. Korman. Specifically, Mary Pearson, Esq. had submitted evidence that was obtained illegally -- in violation of NYS law -- and immoral acts. In addition, this evidence has violated federal statutes, especially but not limited to Federal Rule of Evidence 412(b)(2) [privacy of sex offenders] as referenced in the court papers of 95-CV-931. This evidence should have been inadmissable in court. This issue was raised before the court in writing.

8. In addition, the appellant-plaintiff has stated clearly that the FRCP 11 was not properly and equally applied to the appellees-defendants and; that on appeal there must be hearings de novo for the striking of motions dismissed based upon fraud and misrepresentation. Surely, a motion submitted with inadmissable evidence obtained illegally is misrepresentation and must be striken. Furthermore, an individual sworn to uphold the federal constitution and abide by the laws of the federal constitution, which demands upholding the 14th Amendment, Due Process Clause and the state laws; has committed treason. How can the court accept a motion submitted by a traitor?

9. In addition, due to the conspiracy charge and; that Mr. Berrill is accused of being a member of the Agunah cult and their lacky unethical psychologist as an expert witness, ad verecundium and; the so-called rabbi, Mendel Epstein, leader of the Agunah cult, is charged with conspiring to have had the Honorable Judge Edward R. Korman's signature forged then; if it should be reasonably proven that one of the conspirators forged the Honorable Judge Korman's signature, then all the conspirators must be considered as having forged the Honorable Judge Korman's signature and the full extent of the law must be brought down to bear upon these conspirators. Specifically, but not limited to the FRCP 11, which was brutally not applied to the appellees-defendants in a gross miscarriage of justice.

10. Furthermore, now that the appellee-defendant and Mr.

Adams realize their serious error in misinterpreting the appellant's brief -- that the appellee is charged not only with serious claims and that the appellant's brief raises claims against them, there is absolutely no justifiable reason -- niether legal nor moral nor ethical -- why the court should grant any extra-ordinary privileges to the appellee-defendant the right to file a reply brief. It is immensely clear that a gross miscarriage of justice has occurred. And, it appears as if there has been bias and favoritism towards unethical lawyers who have hitherto committed these unmitigated miscarriages of justice and criminal activity. I trust this court will not allow this appearance to continue.

11. The appellee-defendant was afforded his opportunity to be heard and declined. The appellee-defendant is represented by an attorney and an attorney with full knowledge of the case, as Mr. Adams had made appearances before Judge Korman and; the appellee's-defendant attorney has made his determination that there are no issues raised against his client and declined to rebut. Mr. Adams should not be afforded any more opportunities to be heard. The one to be heard next is the court when it renders its decision.

PLEA FOR RELIEF:

1. That the appellee should no longer be allowed to file a reply brief and;
2. That the appelle should no longer be granted an oral arguement and;
3. That the relief requested against the appellee be granted and;
4. That the relief requested against the appellee be granted by default and;
5. Any other relief that the US Court of Appeals deems necessary.

_____/s/_____ ____/s/_____

Harlow Zirkind, Appellant NOTARY

547 Wyndham Road

Teaneck, NJ 07666 Dated: Feb. 12, 1999

201-836-7557

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

Harlow Zirkind, plaintiff -- appellant

APPEAL NO. 98-9461

- against - USD EDNY 95-CV-931 (ERK)

REPLY TO APPELLEES, MENDEL EPSTEIN, HERSHEL KURZROCK AND RABBINNICAL ALLIANCE OF AMERICA'S RESPONSIVE PLEADINGS TO RULE 25, 26(b), 31 & 45(b) MOTION AND MOTION TO STRIKE

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas;
Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does. -- defendants -- appellees

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1. The attorney for the appellees Mendel Epstein, Hershel Kurzrock and the Rabbinical Alliance of America; Tomas Greenberger, Esq., has presented neither fact nor arguements to refute the appellant's claim that the appellant was not served within the time constraints

within the scheduling order issued. Mr. Greenberger only offers vapid attack while submitting evidence confessing to having violated the scheduling.

2. The appellant stated that the appellant has never received a copy of the appellees' Mendel Epstein's, Hershel Kurzrock's and the Rabbinical Alliance of America's motion. And, the appellant unto this day, has still not received a copy of said motion. By all counts, the appellant has yet to receive a copy of the appellees' motion. The appellees have not complied with the scheduling order and defaulted.
3. The appellant claimed that pursuant to the scheduling order, the appellees were to have served the appellant and filed with the court, the appellees' briefs on or before February 21, 1999. Mr. Greenberger, Esq. served the appellant on February 22, 1999 after the deadline of the scheduling order.
4. By his own admission, Mr. Greenberger stated in his affidavit that Mr. Greenberger filed the papers with the court and served the appellant on February 22, 1999.
5. **Unlike Ms. Sheehan Esq. -- attorney for appellant Mark A. Feldman -- who made machinations of extending the date on the scheduling pursuant to FRCP, Mr. Greenberger did not advance this arguemnet. The appellnat reminds this court and Mr. Greenberger that the appellant was warned numerous times by the clerks to adhere to the dates exactly as stated on the court orders or else the appellant's papers will not be filed and the case dismissed without a hearing. A prominent example are the repeated statements and letters that the appellant's responsive briefs had to be filed on or before March 21, 1999 or the responsive briefs would not be considered. March 21, 1999 was also a Sunday.**
6. **It is improper the attorney Tomas Greenberger be given such lattitude. Wide lattitude is a law and**

procedure reserved strickly for Pro Se litigants and this Pro Se litigant has not been so favored hitherto. It would be blatant prejudice to so favor the attorney, Tomas Greenberger.

7. IS THERE ONE SET OF RULES AND LAWS FOR COMMON CITIZENS AS THE APPELLANT AND ANOTHER FOR MEMBERS OF THE ARISTOCRACY OF THE BAR SUCH AS TOMAS GREENBERGER? THE COURT SHOULD TREAT BOTH SIDES EQUALLY AND NOT FAVOR THE SIDE WITH LEGAL REPRESENTATION. THERE IS BUT ONE LAW AND NO MAN IS ABOVE THE LAW.
8. Furthermore, Mr. Greenberger has still failed to serve the appellant with a copy of this alleged motion even though the appellant has stated clearly that he has not received it.
9. In addition, the affidavit of service submitted by Mr. Greenberger is hereby challenged. And, the appellant demands a traverse hearing. Tomas Greenberger has a long history of committing perjury and fraud upon the courts, especially in the matters of service. I remind this court that Tomas Greenberger repeatedly violated U.S. Postal Service regulations and impersonated signatures approximately four (4) times before the district court in the matter 95-CV-931 before the Honorable Edward R. Korman of the Eastern District of New York. These matters were presented to the district court as part of the contempt hearings in question and were never heard by the court. The entire record of the contempt motions is hereby incorporated by reference.
10. If the court should decide to accept Mr. Greenberger's papers -- and the appellant can not imagine any legal basis for the court to do so -- then the court would appear to be deviating from the court's written order and violating due process. To do so would be a violation of the due process and the 14th Amendment of the Federal Constitution. Furthermore, if the court accepts the

appellees', Mendel Epstein's and Hershel Kurzrock's, brief; then, in accordance with due process and the 14th Amendment the court must grant the appellant the same amount of time to respond as the appellant had to respond to all other briefs and that time can only be counted from the date the appellant recieves Mr. Greenberger's reply brief as documented by US Postal Service receipts.

Wherefore, the appellant, Harlow Zirkind, respectfully requests that this court:

1. To deny any and all oral arguements to the appellee Mark A. Feldman in any form and;
2. To grant the appellant's appeal by default and;
3. To strike any and all briefs filed by the appellee Mark A. Feldman or in the alternative;
4. Order the appellee to serve the appellant with a copy of the brief and;
5. That the appellee must use a form of official US Postal Service documentation for proof of mailing, i.e. return receipt card and;
6. That the appellant be given the same six (6) weeks to respond to the appellees reply brief and;
7. Any other relief that the court deems appropriate.

Sworn to and signature executed before me this
14 th day of the month of April, 1999.

_____/s/_____ _____/s/_____

County of

NOTARY

HARLOW ZIRKIND
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----------X

Harlow Zirkind, plaintiff -- appellant

APPEAL NO. 98-9461

- against - USD EDNY 95-CV-931 (ERK)

REPLY TO APPELLEE, MARK A. FELDMAN'S RESPONSIVE PLEADINGS TO RULE 25, 26(b), 31 & 45(b) MOTION AND MOTION TO STRIKE

State of New York; Office of Court Administration, Chief Administrative Justice, E. Leo Milonas; Honorable Philip C. Segal; Honorable Karen S. Burstein; N. G. Berrill, Ph.D.; Mark A. Feldman, Esq.; Stella Arsenakos, Esq.; Mazal Zirkind; Herschel Kurzrock, Secretary for the Rabbinical Alliance of America; Mendel Epstein; Nick Chimenti a.k.a. Nicholas Chimienti; Mapleton-Midwood Communtiy Mental Board, Inc. a.k.a. Mapleton Service, Cyd Martori, Treasurer; Bernadette Cadore, representative of: Commissioner of Social Services, Department of Social Services of New York City and Human Resources Administration of New York City; Michael Infranco, Deputy Commissioner, Support Enforcement Unit and 50 John and Jane Does. -- defendants - - appellees

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1. The appellee, Mark A. Feldman, true to his track record, committed fraud and misrepresentation upon this court. In addition, Mr. Feldman's alleged attorney, Barbara Sheehan, also committed fraud and misrepresentation upon this court.
2. The court should note that if Ms. Sheehan made an appearance before the court, the appellant was never notified of such by either Mark A. Feldman, appellee; the

clerks or; Ms. Sheehan herself. As such, Ms. Sheehan's papers are defective and not conforming to procedure.

3. Ms. Sheehan has committed fraud and misrepresentation upon the court by obviously misquoting the appellant's motion and stating the appellant's alleged misunderstanding of the timing and scheduling orders. The appellant stated that the appellant has never received a copy of the appellee's Mark Feldman's motion. And, the appellant unto this day, has still not received a copy of said motion. By all counts, if the appellant has yet to receive a copy of the appellee's motion, then the appellee has not complied with the scheduling order and defaulted.
4. The appellant claimed that pursuant to the scheduling order in the appellant's possession which is the same as submitted by Ms. Sheehan herself, the appellees were to have served the appellant and filed with the court, the appellees briefs on or before February 21, 1999. Mr. Feldman and/or his attorney and/or his agent did not serve the appellant on or before February 21, 1999.
5. By her own admission, Ms. Sheehan stated in her affidavit that Ms. Sheehan filed the papers with the court and served the appellant on February 22, 1999.
6. **As to Ms. Sheehan's machinations of extending the date on the scheduling pursuant to FRCP, I remind this court and Ms. Sheehan that the appellant was warned numerous times by the clerks to adhere to the dates exactly as stated on the court orders or else the appellants papers will not be filed and the case dismissed without a hearing. A prominent example are the repeated statements and letters that the appellant's responsive briefs had to be filed on or before March 21, 1999 or the responsive briefs would not be considered. March 21, 1999 was also a Sunday.**
7. **It is improper that either the attorney Barbara Sheehan or Mark A. Feldman be given wide lattitude. This law and procedure is reserved strickly for Pro Se**

litigants and this Pro Se litigant has not been so favored hitherto. It would be blatant prejudice to so favor the attorneys Barbara Sheehan and Mark A. Feldman.

8. IS THERE ONE SET OF RULES AND LAWS FOR COMMON CITIZENS AS THE APPELLANT AND ANOTHER FOR MEMBERS OF THE ARISTOCRACY OF THE BAR SUCH AS MARK FELDMAN? THE COURT SHOULD TREAT BOTH SIDES EQUALLY AND NOT FAVOR THE SIDE WITH LEGAL REPRESENTATION. THERE IS BUT ONE LAW AND NO MAN IS ABOVE THE LAW.
9. Furthermore, Ms. Sheehan and/or Mark Feldman have still failed to serve the appellant with a copy of this alleged motion even though the appellant has stated clearly that he has not received it.
10. In addition, the affidavit of service submitted by Ms. Sheehan is hereby challenged. And, the appellant demands a traverse hearing. Mark Feldman has a long dark history of committing perjury and fraud upon the courts, especially in the matters of service. Furthermore, Mark Feldman has found no lack of unscrupulous and corrupt lawyers to act likewise on his behalf. I remind this court that Mark Feldman avoided service several times before the Honorable Edward R. Korman of the Eastern District of New York and hereby inform this court that Mark A. Feldman did the same in Superior Court of Bergen County, New Jersey, case# BERL 1552-96, when Mark A. Feldman's attorney, David Wallace, Esq., commmitted fraud and misrepresentation upon the Case Information Statement and did not state that there was a concurrent case in the matter going on, in the Eastern District of New York. The entire record of BERL 1552-96, is hereby incorporated by reference.
11. Mr. Feldman who has committed perjury and witness tampering as part of his long list of crimes and deviations

of due process, has no credibility.

12. If the court should decide to accept Mr. Feldman's papers -- and the appellant can not imagine any legal basis for the court to do so -- then the court would appear to be deviating from the court's written order and violating due process. To do so would be a violation of the due process and the 14th Amendment of the Federal Constitution. Furthermore, if the court accepts the appellee's, Mark A. Feldman's, brief; then, in accordance with due process and the 14th Amendment the court must grant the appellant the same amount of time to respond as the appellant had to respond to all other briefs and that time can only be counted from the date the appellant recieves Mr. Feldman's reply brief.

Wherefore, the appellant, Harlow Zirkind, respectfully requests that this court:

1. To deny any and all oral arguements to the appellee Mark A. Feldman in any form and;
2. To grant the appellant's appeal by default and;
3. To strike any and all briefs filed by the appellee Mark A. Feldman or in the alternative;
4. Order the appellee to serve the appellant with a copy of the brief and;
5. That the appellee must use a form of official US Postal Service documentation for proof of mailing, i.e. return receipt card and;
6. That the appellant be given the same six (6) weeks to respond to the appellees reply brief and;
7. Any other relief that the court deems appropriate.

Sworn to and signature executed before me this
23 th day of the month of March, 1999.

_____/s/_____ _____/s/_____

County of

NOTARY

HARLOW ZIRKIND
547 Wyndham Road
Teaneck, NJ 07666
201-836-7557

Exhibit 22 – NYS Family Court Child Support case F-22519/93C against petitioner. Notice one copy without a seal of the court and judicial signature and; one copy with a seal of the court and judicial signature.

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK
CHILD SUPPORT ENFORCEMENT TERM
60 LAFAYETTE ST. DOCKET NO.
NEW YORK, NY 10013 F-22519/93 C

SUMMONS & NOTICE

COUNTY OF ORIGIN KINGS

* *

IN THE MATTER OF A PROCEEDING FOR
SUPPORT UNDER ARTICLE 4 OF THE FAMILY COURT
ACT

—

COMMISSIONER OF SOCIAL SERVICES
OF THE CITY OF NEW YORK
AS ASSIGNEE OF–
MAZAL ZIRKIND, PETITIONER

AGAINST

HARLOW ZIRKIND, RESPONDENT

* *

[.....]

A PETITION FOR MODIFICATION OF AN ORDER OF SUPPORT HAVING BEEN FILED IN THIS COURT, A

COPY OF SAID PETITION BEING ANNEXED HERETO:

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT AT THE CHILD SUPPORT ENFORCEMENT TERM, 60 LAFAYETTE ST, NEW YORK NY 10013 ON FLOOR 8, PART HE12 OF THIS COURT ON JULY 22, 1999 AT 9:00 AM TO ANSWER THE PETITION AND TO BE DEALT WITH IN ACCORDANCE WITH ARTICLE 4 OF THE FAMILY COURT ACT.

[....]

DATE: JUNE 15, 1999. BY ORDER OF THE COURT

EUGENE O O'CONNOR
CLERK OF THE COURT

[NEITHER SIGNATURE NOR SEAL WERE AFFIXED.]

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK
CHILD SUPPORT ENFORCEMENT TERM
60 LAFAYETTE ST. DOCKET NO.
NEW YORK, NY 10013 F-22519/93 C

SUMMONS & NOTICE

COUNTY OF ORIGIN KINGS

* *

IN THE MATTER OF A PROCEEDING FOR
SUPPORT UNDER ARTICLE 4 OF THE FAMILY COURT
ACT

COMMISSIONER OF SOCIAL SERVICES
OF THE CITY OF NEW YORK
AS ASSIGNEE OF
MAZAL ZIRKIND, PETITIONER

AGAINST

HARLOW ZIRKIND, RESPONDENT

* *

[.....]
A PETITION FOR MODIFICATION OF AN ORDER OF
SUPPORT HAVING BEEN FILED IN THIS COURT, A
COPY OF SAID PETITION BEING ANNEXED HERETO:

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE
THIS COURT AT THE CHILD SUPPORT
ENFORCEMENT TERM, 60 LAFAYETTE ST, NEW
YORK NY 10013 ON FLOOR 8, PART HE12 OF THIS
COURT ON OCTOBER 25, 1999 AT 9:00 AM TO

ANSWER THE PETITION AND TO BE DEALT WITH IN ACCORDANCE WITH ARTICLE 4 OF THE FAMILY COURT ACT.
[....]

DATE: JULY 23, 1999. BY ORDER OF THE COURT
EUGENE O O'CONNOR
CLERK OF THE COURT

[NEITHER SIGNATURE NOR SEAL WERE AFFIXED.]

DATE: 07/23/1999 SUMMONS COVER SHEET

NEW YORK CITY FAMILY COURT THE CITY OF NEW YORK
CHILD SUPPORT ENFORCEMENT TERM
ADMINISTRATION FOR CHILDREN'S SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT
----------X

CSMS CASE NUMBER: NJ59545M1
HEARING DATE: 10/25/1999
DOCKET NUMBER: F-22519/93C

CASE NAME: MAZAL ZIRKIND
PETITIONER (IF DIFFERENT): [None specified although the petitioner is different. The petitioner is the Dept. of Social Services.]

LISTED BELOW ARE THE RESPONDENT'S HOME AND JOB SITES FOR USE IN SUMMONS SERVICE:

RESPONDENT NAME: HARLOW ZIRKIND
(ALIAS):
ADDRESS: 547 WYNDHAM RD
TEANECK, NJ 07666

EMPLOYER NAME: UNKNOWN
MAILING ADDRESS: [none state]

There is no seal or signature affixed to this document. It is merely a computer printout.

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK
CHILD SUPPORT ENFORCEMENT TERM
60 LAFAYETTE ST. DOCKET NO.
NEW YORK, NY 10013 F-22519/93 C

SUMMONS & NOTICE

COUNTY OF ORIGIN KINGS

* *

IN THE MATTER OF A PROCEEDING FOR
SUPPORT UNDER ARTICLE 4 OF THE FAMILY COURT
ACT

COMMISSIONER OF SOCIAL SERVICES
OF THE CITY OF NEW YORK ORDER OF SUPPORT
ORDER CONTINUING

AS ASSIGNEE OF (RE: ARREARS)
MAZAL ZIRKIND, PETITIONER (RE: $ JUDGEMENT)

AGAINST

HARLOW ZIRKIND, RESPONDENT

* *

A VERIFIED PETITION HAVING BEEN FILED IN THIS
COURT [.....]

ORDERED THAT HARLOW ZIRKIND (...) WHO
CURRENTLY RESIDES AT 547 WYNDHAM RD,
TEANECK, NJ 07666, PROVIDE THE SUPPORT

COLLECTION UNIT, [....]

DATE: 10/25/99.

ENTER
[seal affixed]
/S/
ELIZABETH SHAMAMS
(Last Name illegible)

Exhibit 23 – Contempt motion brought against Micheal Infranco, Deputy Commissioner of the Support Enforcement Unit during the proceedings of NYS Family Court Support case# F-22519/93C

FAMILY COURT OF NEW YORK
COUNTY OF NEW YORK

----------X

Harlow Zirkind, respondent

CONTEMPT OF COURT MOTION AGAINST MICHEAL INFRANCO

- vs - DOCKET# F-22519/93C

Child Support Enforcement Agency; Judge Philip C. Segal; Hearing Examiner Dorothy McCarrick, Eugene O O'Connor and 50 John & Jane Does petitioners

----------X

1. Micheal Infranco, Deputy Commissioner of the Support Enforcement Unit, petitioner and his agents and employees, have stated in the Support Enforcement Unit's papers to this court that there is currently a court order for support of "$215.00 [two hundred fifteen dollars] biweekly". See Exhibit 1, page 2 of petition.
2. This statement in and of itself, is fraud and perjury upon this court. The copy of the court order in the respondent's possession clearly states $75.00 [seventy-five dollars] per week. Two times $75.00 [seventy-five] dollars is still $150.00 [one hundred fifty dollars]. Mr. Infranco and his agency have been informed multiple times about this extortionate over-assessment and with all impunity have disregarded the court order, the laws of NYS and the federal laws governing this matter.
3. Mr. Infranco was informed of this matter when Mr.

Infranco was personally sued during the course of the proceedings of 95-CV-931 (ERK), USD EDNY. The entire record of the proceedings of 95-CV-931 (ERK), USD EDNY are hereby included by reference. Mr. Infranco never denied the allegation and never raised any defense to his illegal and unconstitutional actions. Mr. Infranco's actions are against the laws of both the NYS Constitution and the federal constitution. Pursuant to federal law, the matter is now res judicata that Mr. Infranco has committed this illegal activity and been duely informed thereof.

4. Mr. Infranco has perpetrated malicious, premeditated acts of racketeering by sending demands [via fax and written letter] to the respondent's employer demanding wage and salary garnishings of $238.00 [two hundred thirty-eight dollars] biweekly and $119.00 [one hundred nineteen dollars] biweekly for arrears which are extortionate over-assessments of a previously issued court order.
5. The respondent demands by law and by right that Mr. Infranco be incarcerated for maximum penalty of 6 [six] months for his contempt of court.
6. The respondent need not be present for any of the contempt proceedings as Family Court regularly and commonly makes such decisions ex-parte. See Exhibit 2, Page 2 of Summons to Appear before the court.
7. Furthermore, the evidence speaks for itself and;
8. Until this court demonstrates that it will abide by the laws of the State of New York and the federal constitution, including but not limited to the Equal Protection Clause of the 14th Amendment, the respondent adamantly refuses to appear before this court as this court acts in a kangaroo fashion and therefore has lost all jurisdiction in the eyes of the law. Unless this court incarcerates Mr. Infranco for

his well-known, malicious extortionate over-assessment, harassment and abuse of power, the respondent will maintain that this court acts in derogation of the federal and NYS laws and lacks any and all jurisdiction and; is nothing more than a sexist, anti-Semitic cesspool of hatred, extortion, corruption and abuse of process.

Wherefore the plaintiff respectfully requests the following relief:

1. That the defendants be ordered to cease and desist from any collection of so-called child support and;
2. That this court cease and desist from its unconstitutional course of action and;
3. That Micheal Infranco be incarcerated for the maximum penalty of 6 [six] months and;
4. That Micheal Infranco be fined $200,000.00 [two hundred thousand dollars] and;
5. Any other relief deemed appropriated by the court.

Affirmed to me this 23rd day of August, 1999

_____/s/_____
NOTARY

_____/s/_____
Harlow Zirkind
547 Wyndham Road
Teaneck, NJ 07666

Exhibit 24 – Transcript, June 1, 1993, Brooklyn Family Court
[Complaint, Exhibit 12]

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK – COUNTY OF KINGS, INTAKE A
----------X
I n the Matter of HARLOW ZIRKIND
DOCKET NO.
O5998/96
V8536-7/93
----------X

HELD: 283 Adams Street
Brooklyn, New York
June 1, 1993

BEFORE: THE HONORABLE KAREN S. BURSTEIN, JUDGE

PRESENT: MAZAL ZIRKIND, PETITIONER

SANFORDENE L. WALKER,
Official Court Reporter

Court officer: Your honor these are numbers 144 through 146 on the calendar in the Matter of Harlow Zirkind. Raise your right hand. Do you swear or affirm to tell the truth in this matter before the court, so help you god?

The Petitioner: I affirm.

Court officer: State your name for the record, please.

The Petitioner: Mazal Zirkind

The Court: I take it Harlow Zirkind, your husband—you still

live together right?

The Petitioner: Right. We're going through Rabbinic court for divorce.

The Court: You think you're going to get the custody under the Rabbinic court decision?

The Petitioner: Yeah.

The Court: Where will he go if I put him out?

The Petitioner: He has a friend who he stays until two, three, four in the morning, anyway.

The Court: Police to assist. Did you tell the rabbis you were coming here?

The Petitioner: They advise me to come. **Did you see the letter in the file?**

The Court: Order of Protection, usual terms, plus respondent is excluded and to stay away from petitioner, petitioner's residence, and not to interefere with custody. Temporary order of custody for both children. Order to show cause returnable 6/23/93. Service by 6/21.

Certified to be a true and accurate transcript of minutes taken by me in the above matter to the best of my skills and abilities.

/s/
Sanfordene L. Walker
Official Court Reporter

Exhibit 25 – Motion to Join Judge William Rigler, This motion was granted by Magistrate Caden at the 1st status conference on or about June 13, 1995.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

Harlow Zirkind, plaintiff 95-CV-931 (ERK-JLC)

MOTION FOR JOINDER OF PARTIES

- against - JUSTICE WILLIAM RIGLER

RULE 19 MOTION

State of New York, et al.

----------X

1. The plaintiff, Harlow Zirkind, will move this court, before the Honorable Judge Korman, at the United States Courthouse, 225 Cadmen Plaza East, Brooklyn, NY, on the ____ day of the month of _____, 19___, to join Justice William Rigler of New York State Supreme Court as a defendant to the above captioned action.

2. Justice William Rigler violated the plaintiff's civil rights with an utter denial of due process in the ways to the other defendants for the same bigotted and prejudiced reasons; and for the purpose of religious persecution with unconstitutional laws as described in, but not limited to the Complaint and elaborated in the Reply to Rabbis Hershel Kurzrock and Mendel Epstein defendants; and will be described in the Memorandum of Law.

A. The defendants Mazal Zirkind, Mark A. Feldman, Herschel Kurzrock, Mendel Epstein, and The Rabbinical Alliance of America, conspired to coerce the plaintiff to commit a religious ritual that he does not wish to perform as well as to consent to an unequitable divorce agreement, by initiating and protracting a malicious prosecution predicated on false child and sexual abuse charges and abusing the process which includes but is not limited to New York State Family Court, court appointed

mental health facilities and evaluators and other New York State and City government officials and agencies.

B. In addition they acted in this manner for: sexism, sizeism, the (religious or dogmatic) belief or creed in divorce as opposed to the Judeo-Christian belief in marriage as well as the creed that divorce is good for children as opposed to the Judeo-Christian belief that divorce is bad for children, Hellenistic Jewish practices and beliefs, greed, corruption, and lying and covering up.

C. By the above mentioned actions and/or processes, the plaintiff had monies and property confiscated; was evicted from his home; denied access to his home; and denied access, society and parenting of his children.

D. Justice William Rigler is charged with denying the plaintiff due process in order to deny the defendant any legal redress at all for the malicious denial of access to his children under color of state law, who were being held hostage under color of state law for extortionery purposes under the color of state law in order that the plaintiff perform a religious ritual in accordance with Justice Rigler's as well as the above mentioned defendant's Hellenistic Jewish beliefs which are contrary to the plaintiff's Orthodox/Hassidic Jewish beliefs. In addition, Justice Rigler attempted to cover-up the gross denial of due process by Justice Burstein.

5. The plaintiff is filing In Propria Persona. The plaintiff is not a lawyer or student of United States law. Therefore, in accordance with District court procedure, the plaintiff's complaint must be liberally construed and if some claim has been stated, no matter how inarticulately, the court should address the matter. For brevity's sake, the plaintiff respectfully refers this court to the section of the original complaint, titled IN PROPRIA CONSIDERATIONS, for case citations as precedents and substantiating this claim.

6. The court should be aware that Justice Rigler was the

presiding judge in the notorious divorce case Schwartz v. Schwartz in Brooklyn Supreme Court and demanded that the husband Yehuda Schwartz submit to binding arbitration at the Rabbinical Alliance of America as well as perform the Jewish divorce ceremony at the Rabbinical Alliance of America. This was well documented by Naomi Schwartz's father, Sidney (Shalom) Klass, owner and editor of the Jewish Press, in weekly articles about his daughter's divorce case. Schwartz v. Schwartz was tried by Judge Rigler who wrote the "GET LAW" during the trial in collaboration with Naomi Schwartz's attorney Dennis Rapps, and is the only Judge in the state of New York to ever invoke the law. Judge Rigler invoked the law several weeks before the gubernatorial election and a substantial time after the trial was over and both parties had remarried. (Exhibit 2 of the Reply to Rabbis Hershel Kurzrock and Mendel Epstein). In addition, as reported to the plaintiff by his attorney at the time, Ira Kerzner, Justice Rigler in absolute contradiction to New York State legislative mandate Section 1235, Civil Practice Act, Article 77, refused to sign and hear a writ of habeas corpus -- Kings County, New York State Supreme Court, index# 44838/93 -- that the plaintiff brought immediately after the TEMPORARY order of protection issued by Judge Burstein had expired and was reissued in absolute contradiction to New York State law without any due process at all: no trial or hearing. This habeas corpus was appealled and the appealled denied, appeal# 93-09406. The plaintiff exhausted ALL his state remedies in this matter.

7. This action of Judge Rigler and the appeallate division, effectively denied the plaintiff of any legal recourse within the state of NY and forced the plaintiff to return to family court and have his matter adjudicated by the bigotted Judge Burstein who was denying my rights and any form of legal recourse. This thwarting of justice is stereotypical of the family and matrimonial courts of the state of NY in order to: (i) Thwart all attempts at legal redress of a custody/visitation/matrimonial

dispute so that the aggreived parents will resort to violence and thereby create a situation where the children can then 'rightfully' be removed from the parent's lives forever because the parents can now be labeled 'violent'. (ii) Deplete the litigants of all their assests. (iii) Have the litigants waste their money on unnecessary lawyers fees and thereby support the lawyer industry. (iv) Have the litigants waste there money on unnecessary court legal fees and thereby support the judicial industry. (v) Create an administrative bureaucracy that can be justifiablely paid for with tax dollars. It is no wonder that the NYS family courts are constantly growing and that recommendations are constantly being made for hiring more judges and expanding court facilities. (See Exhibit 5 of the Reply to Stella Arsenakos, OCA 10/3/94 press release) If frivolous and baseless lawsuits would not be entertained in Brooklyn Family Court, the caseload would be diminished by 95%-97%, this would require the firing of 9 out of ten judges in Brooklyn Family court.

8. When the plaintiff filed the Complaint, it was the plaintiff's intent to include Justice William Rigler. However, the plaintiff was not able to ascertain Justice Rigler's address for service. As the Office of Court Administration has Justice Rigler's address and refuses to divulge this address pursuant to discovery (Exhibit 1 of plaintiff's Motion for Time and Scheduling), and/or request that Justice Rigler submit a waiver to the Attorney General; that pursuant to F.R.C.P. 26(b)(5) the Office of Court Administration be ordered to give the plaintiff Justice Rigler's address for service and that the Eleventh Admendment does not apply when there is denial of due process and/or unconstitutional actions and/or prejudicial actions taken as elaborated in the plaintiff's Replies, especially but not limited to Stella Arsenakos.

Wherefore, the plaintiff respectfully requests that:

1. That Justice William Rigler be added as a defendant to this action and;
2. That the Office of Court Administration be ordered to furnish the plaintiff with Justice Rigler's address for service OR;
3. That the Office of Court Administration be ordered to have Justice Rigler sign a waiver within thirty (30) days of granting of this motion, to accept service by a third party that will be made known to the plaintiff.

Sworn to and signature executed before me this
26 th day of the month of December 1995.

_____/s/_____ _____/s/_____

County of HARLOW ZIRKIND
547 Wyndham Road
NOTARY Teaneck, NJ 07666
201-836-7557

Exhibit 26 – Affidavit from Mrs. Evelyn Zirkind that the Teaneck policmen stated they have no jurisdiction to serve NYS court papers.

I, Evelyn Zirkind, the undersigned reside at 547 Wyndham Road, Teaneck, NJ. On Saturday, December 23, 1995, at approximately 11:00 AM, the Teaneck Police came to my house and uniform patrolmen asked to see my son, Harlow Zirkind. My son was not there and the police left a summons for my son. While speaking with the police officer, the police officer told me, "I don't know why I am doing this, we don't even have jurisdiction."

Affirmed to me this 27 day of Dec. 1995

_____/s/_____ _____/s/_____

NOTARY EVELYN ZIRKIND

Exhibit 27 – Letter to Magistrate Pollack, naming specific witnesses to testify in contempt hearings and other pertinent evidence to substaniate claims.

Harlow Zirkind
547 Wyndham Road
Teaneck, NJ 07666
phone/fax: 201-836-7557
May 20, 1996

Magistrate Cheryl L. Pollak
US District Court
225 Caadman Plaza
Brooklyn, NY 11201

RE: 95-CV-931 (ERK-CLP)
Outstanding Contempt of Court Motions
Outstanding Injunction Against Mark A. Feldman and Bergen County Superior Court

Dear Honorable Magistrate Pollak:

Regarding the pending contempt of court motions and motions to dismiss. Pursuant to F.R.C.P. Rule 56(g), the motions to dismiss must be striken if they were presented based upon fraud; and the fraud described in the contempt motions most certainly qualifies as the kind of fraud that warrants striking the motions to dismiss.

Further, to support my claims made in the contempt motions, pursuant to due process and Federal Rules of Evidence 404(a)(1), 404(b), 405(a), 405(b), 406; I respectfully demand by right of due process to have the following enumerated witnesses testify (as well as any other witnesses previously mentioned to the court and those that will choose to step

forward) and that subpeonas should be issued therefore.

In regards to the Contempt Motion against Hershel Kurzrock:

Lew Levin a.k.a. Yehudah Levin
2986 Bedford Avenue
Brooklyn, NY 11210

Micheal Hizme
1964 Haring St.
Brooklyn, NY 11229

In regards to the contempt motion against Justice Segal:

Hershel Muller and his children
Moshe & Aaron Muller
@ father's address where the children live
and the father has custody of the children at this time
1228 55th Street
Brooklyn, NY 11219

Barbara Muller
1258 East 31st St.
Brooklyn, NY 11210

Aron Muller, CPA
4510 16th Avenue
Brooklyn, NY 11204

Rabbi Peretz Steinberg
141-14 72nd Crescent
Flushing, NY 11367

Amrom Muller

Coucilman Noah Dear

4620 18th Avenue
Brooklyn, NY 11204

Rabbi Yitzchok Isbee

Rabbi Yaacov Israel
1777 Ocean Parkway
Apt 202
Brooklyn, NY 11223

In regards to the contempt against Mark A. Feldman:

Rabbi Israel Kleinman
789 East 8th Street
Brooklyn, NY 11230

In addition, although due to time constraints, I was unable to provide the court with exact information at the time; as stated in my petition to the court requesting an emergency hearing upon the outstanding injunction against Mark A. Feldman as Mr. Feldman has established a live controversy by filing suit in Bergen County Superior Court, Bergen County, NJ -- in spite of this District Courts prior jurisdiction and adjudication of the claim -- The State of New Jersey has made decision regarding Jewish ritual divorce which violate the Free Exercise and Establishment Clause: See Minkin v. Minkin, 180 NJ Super 260; Segal v. Segal, 650 A. 2d 996, 278 NJ Super. 218; Burns v. Burns, 538 A. 2d 438, 223 NJ Super. 219. These decisions are very similar to the infamous Schwartz v. Schwartz decision (described in detail in the Joinder Motion against Judge Rigler) which was the forerunner of the Get Laws. May the court please refer to the above mentioned cases when considering the matter.

Thank you.

Sincerely,
/s/
Harlow Zirkind, plaintiff